CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 63

JOSE AUDON SALAZAR DELGADILLO,
PETITIONER,

vs.

William A. Carmichael
~~ALBERT DEL GUERCIO~~, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE, DISTRICT No. 16

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 14, 1947.

CERTIORARI GRANTED JUNE 2, 1947.

No. 11225

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

ALBERT DEL GUERCIO, District Director, Immigration and Naturalization Service, United States Department of Justice, District No. 16,

Appellant,

vs.

JOSE AUDON SALAZAR DELGADILLO,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeals from the District Court of the United States for the Southern District of California, Central Division

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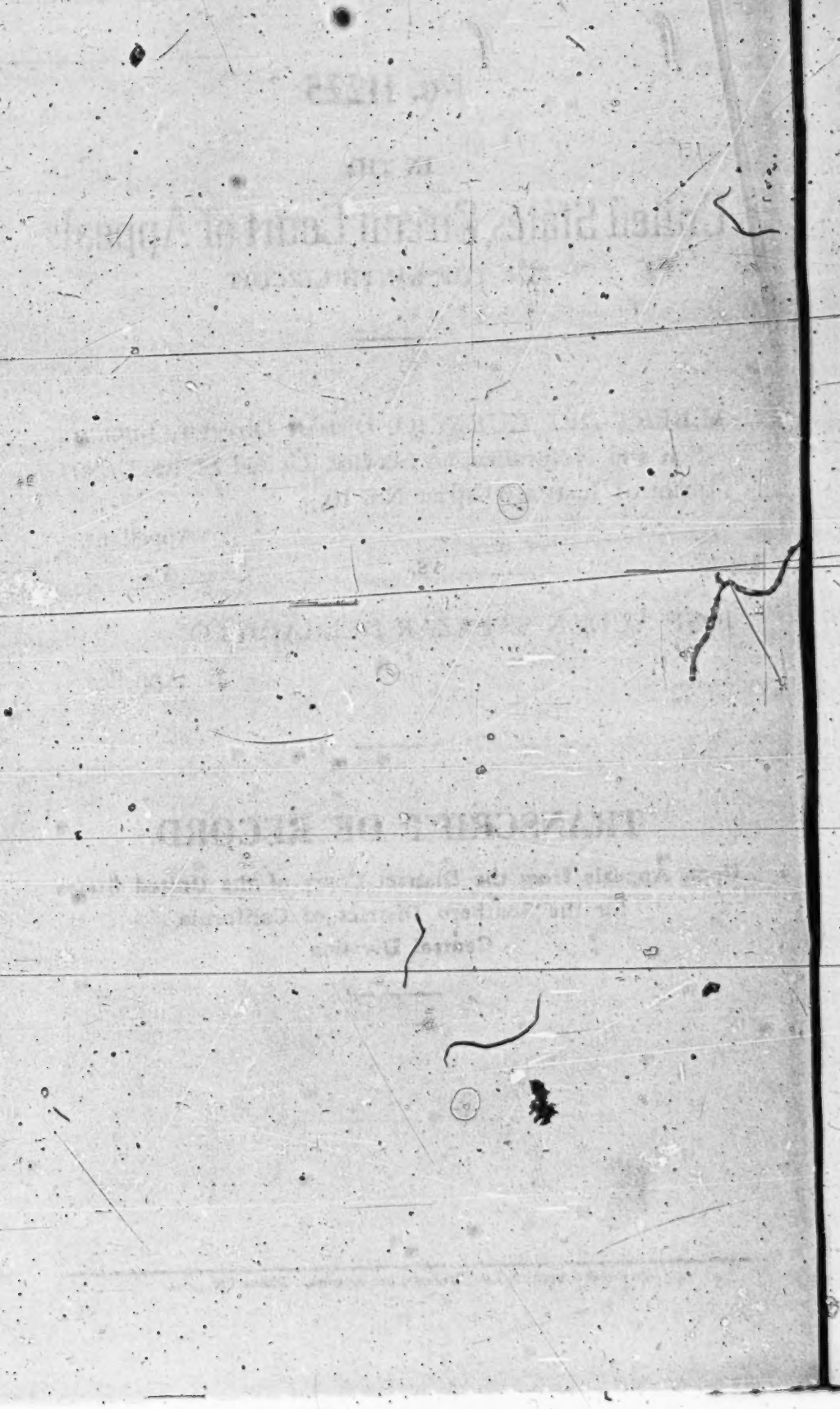

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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410 West Sixth Street
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*Page number appearing at foot of Certified Transcript.

United States District Court
Southern District of California
Central Division
No. 4701-O'C

In the Matter of JOSE AUDON SALAZAR DELGADILLO, an Alien,

Petitioner.

PETITION FOR WRIT OF HABEAS CORPUS

To the District Court of the United States, Southern District of California, Central Division.

The Petition of Jose Audon Salazar Delgadillo, Based on Three Separate Grounds, Respectfully Shows:

I.

That petitioner is now being held in the custody of, and is restrained of his liberty, in Los Angeles County, State of California, by one Albert Del Guercio, District Director of Immigration and Naturalization Service, Department of Justice.

II.

That on or about the 23rd day of June, 1944, a deportation proceeding was commenced against your petitioner under the provisions of Section 19, of the Immigration Act of February 5th, 1917, and according to the best knowledge and belief of your petitioner the cause or pretense of such custody and restraint is a document entitled "Warrant of Deportation", dated May 26th, 1945, issued on order of the Board of Immigration Appeals, United [2] States Department of Justice.

III.

That no previous application for a Writ of Habeas Corpus has been made on behalf of, or by petitioner, and petitioner's custody and restraint is based exclusively on the aforementioned Warrant of Deportation, and is not held for any other cause, or reason whatsoever.

IV.

That on or about April 26th, 1945, petitioner engaged present counsel, and that on several occasions thereafter, said counsel was permitted to, and he did, inspect the file and record of said Immigration and Naturalization Service, covering this deportation proceeding.

V.

Based upon a review of said file and record, petitioner alleges as follows:

That on the 23rd day of June, 1944, the Immigration and Naturalization Service, Department of Justice, issued a warrant of arrest therein naming petitioner as the alien to be arrested, and also therein commanding any immigrant inspector to take your petitioner into custody, and grant him a hearing.

That by virtue of said warrant of arrest three hearings occurred on the following dates:

July 8th, 1944
July 10th, 1944
August 21st, 1944.

That All of Said Hearings Were Held at San Quentin Penitentiary, San Quentin, California, While Petitioner Was an Inmate Therein.

That petitioner was not taken into the custody of the Immigration and Naturalization Service, Department of Justice, until June 19th, 1945, and then for the first time.

Petitioner desires to set forth at this point Section 150.6

of [3] *of* Part 150 of the Immigration and Nationality Laws and Regulations, dated March 1st, 1944; viz:

> "Section 150.6. Hearing; when to be accorded under warrant. After the alien has been taken into custody under a warrant of arrest, and has been given a reasonable time to arrange for his defense, including, if desired, representation by counsel, and after the formal warrant of arrest has been received, if arrest has been accomplished under a telegraphic warrant, the alien shall be granted a hearing to determine whether he is subject to deportation on the charges stated in the warrant of arrest."

Petitioner alleges that said Immigration and Naturalization Service, Department of Justice, denied said petitioner the protective benefits of said Section 150.6 in this:

> Petitioner was compelled to submit to the aforesaid hearings approximately one year prior to being taken into custody by said Immigration and Naturalization Service, Department of Justice.

In consequence whereof, petitioner alleges that said Immigration and Naturalization Service, Department of Justice, in so doing, exceeded its jurisdiction; and for the same reason petitioner further alleges that all of said hearings were unfair to him, in this:

> That the first hearing was held July 8th, 1944, which was on a Saturday; at the conclusion of said hearing the presiding Immigration Inspector informed petitioner that the hearing would be continued to 10:45 A. M. Monday, July 10th, 1944, so that petitioner [4] might have a reasonable time to arrange for said petitioner's defense.

Petitioner denies that 48 hours is a reasonable time to arrange for one's defense, particularly when 36 hours

of said 48 hours represents a holiday period (see page 2 of transcript of testimony taken at July 8th, 1944 hearing).

Secondly

Petitioner by Way of a Plea in Bar and as a Separate and Distinct Defense Against the Execution of Said Warrant of Deportation, Further Respectfully shows:

I.

Petitioner re-pleads paragraphs I, II, III, and IV of his first showing herein, and makes the same a part hereof as though fully set forth at this point.

II.

That on or about the 19th day of June, 1945, your petitioner was released on parole by the State of California, in connection with an offense involving moral turpitude; that your *ep*titioner is presently on parole, and that Paragraph 8 B of said parole reads as follows:

> "This parole may be suspended, canceled or revoked, and your term of imprisonment may be increased by the adult authority, and pending action by the authority you may be returned immediately to a State Prison or may be held in Jail until you can be returned to a State Prison."

Petitioner alleges that the Second Proviso, of Section 19, of the Immigration Act of February 5th, 1917, expressly prohibits the deportation of an alien convicted in this country of a crime involving moral turpitude, Until After the Termination of His [5] Imprisonment, in consequence whereof, petitioner al*l*ges, that in ordering the execution of the aforesaid Warrant of Deportation, said Board of Immigration Appeals, Department of Justice, has exceeded its jurisdiction.

Thirdly.

Petitioner re-pleads paragraphs I, II, III, and IV of his first showing herein, and makes the same a part hereof as though fully set forth at this point.

I.

Based on a further review of said file and record, petitioner believes, and therefore, alleges: That while the testimony adduced at said several hearings aforesaid, show that petitioner last entered the United States, July 19th, 1942, at the Port of Miami, Florida, petitioner strenuously denies that the character and nature of said entry are such that comes within the meaning and contemplation of said Immigration Act of February 5th, 1917, and said denial is bottomed on the following facts:

That petitioner signed ship's articles by virtue of which said petitioner became a crew member of the SS Andrew Jackson. (See Q 4@ page 13 of transcript of testimony of 8-21-44.) That the destination of said ship was unknown to petitioner. (See Q 8 @ page 13 of transcript of testimony of 8-21-44.)

That petitioner alleges that if sworn as a witness he could now competently testify, as follows:

That said Ship's Articles which petitioner signed called for an Intercoastal Voyage, only, and by way of corroboration, *petition* annexes hereto opposite page 8, marked Exhibit 1, photoprint copy of Bureau of Marine Inspection and Navigation, Department of Commerce, Certificate of Discharge, dated August 1st, 1942.

That the specific destination of SS Andrew Jackson was New York City; and by way of coroborration, petitioner annexes [6] hereto at page 9, marked Exhibit 2,

photoprint copy of Naval District Commandant, New York, New York, communication dated June 23rd, 1945.

In this connection petitioner desires to point out the following:

That Executive Order No. 9054, establishes a War Shipping Administration, and provides as follows: (see U. S. C. A. Title 50, Section 1295—War Appendix)

1. There is established within the office for emergency management of the Executive Office of the President, a War Shipping Administration under the direction of an administrator, who shall be appointed by and responsible to the President.
2. The Administrator shall perform the following functions and duties.

a: Control the Operation, Purchase, Charter, Requisition, and Use of All Ocean Vessels Under the Flag or Control of the United States.

8. Within the Purposes of the Order the Administrator Is Authorized to Issue Such Directives Concerning Shipping Operations as He May Deem Necessary or Appropriate and His Decision Shall Be Final With Respect to the Functions and Authorities so Vested in Him.

II.

Petitioner believes and, therefore, alleges, that the opinion of the presiding inspector dated July 13th, 1944, under finding of fact No. 2 at page 2, thereof, viz., "That the Respondent Last Entered the United States July 19, 1942 at the Port of Miami, Florida, and the conclusions of law based thereon, viz., "That Under Section 20 of the Immigration Act of 1917, the Respondent Is Deportable to Mexico at Goverment Expense, set forth under item 2, at page 3 of said opinion, constitutes prej-

udicial error, resulting in the misapplication of a rule of law, in this: [7]

That said SS Andrew Jackson and petitioner thereon aboard as a crew member both proceeded to points pursuant to order of the United States Goverment, in that said SS Andrew Jackson, together with its crew members were under the ultimate control of said United States Goverment; that said control was exercised through the aforesaid War Shipping Administration, a Federal Agency; that, therefore, notwithstanding said SS Andrew Jackson may have entered and cleared one or more foreign ports, such clearing and entering were in obedience to Goverment Directives, both as to ship and crew members.

III.

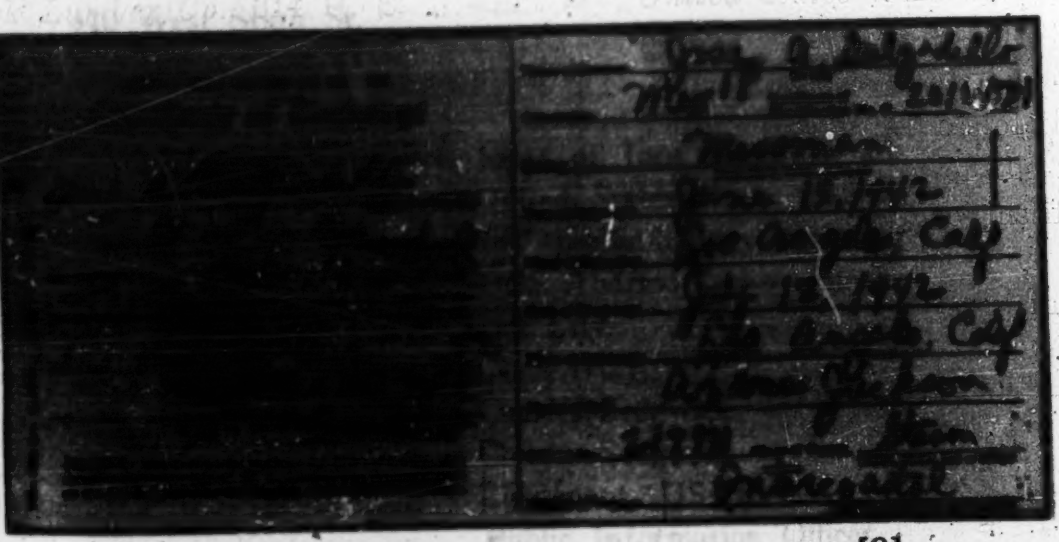
In consequence whereof, petitioner believes and, therefore, alleges, that any entry by petitioner into the United States, a direct result of a War Shipping Administration Directive, does not constitute an entry within the meaning of the Immigration Act of February 5th, 1917; and that petitioner believes and, therefore, alleges that his entry at the Port of Miami, Florida, aforesaid, was the natural result of a War Shipping Administration directive.

Wherefore, your petitioner prays that a Writ of Habeas Corpus issue, directed to Albert Del Guercio, District Director, United States Immigration Service, Department of Justice, commanding him to have the body of petitioner, to wit, Jose Audon Salazar Delgadillo, together with the cause of such imprisonment and restraint, forthwith, before the Court granting said writ.

JOSE AUDON SALAZAR DELGADILLO
Petitioner

ALBERT LAX
Attorney for Petitioner [8]

[PETITIONER'S EXHIBIT NO. 1]



[9]

[PETITIONER'S EXHIBIT NO. 2]

Refer to No.
33/CS/ftd

Office of
THE NAVAL DISTRICT COMMANDANT
Navy 121
Fleet Post Office
New York, N. Y.
23 June 1945

[Stamped]: Received Jun 28 1945

Mr. Albert Lax
Attorney at Law
410 West Sixth St.
San Pedro, Calif.

Sir:

With reference to your letter of June 11, 1945, addressed to Port Director, United States Navy, Balboa, Canal Zone, the answer to your specific inquiry regarding the destination of the vessel SS Andrew Jackson at the time in question is: New York City.

Yours very truly,
Charles Sedgwick
Charles Sedgwick
Lieutenant, USNR
Public Information Officer

CC:
Port Director, Balboa
Commander Lithgow
Navy Dept (DirPubInfor) [10]

[Verified.]

Received copy of the within this 27 day of Aug., 1945.
Charles H. Carr, U. S. Atty., RM, Attorney for U. S.

[Endorsed]: Filed Aug. 27, 1945. [11]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE IN RE: WRIT OF HABEAS CORPUS

Upon reading the verified petition of Jose Audon Salazar Delgadillo on file herein, the above named applicant and, good cause appearing therefor:

It Is Hereby Ordered That, Albert Del Gurcio, District Director of Immigration and Naturalization Service, Department of Justice, appear before this Court on the 4th day of Sept., 1945, at the hour of 10 o'clock A. M., in the Court Room of the Honorable Peirson M. Hall, located in the Federal Building, situate corner Temple and North Spring Streets, Los Angeles, Los Angeles County, California, then and there to show cause, if any he has, why a writ of Habeas Corpus should not be issued herein as prayed for; and it is further ordered that a copy of this order be served upon said Albert Del Gurcio at least 5 days prior to the date set for the hearing thereon.

Dated: 8-27-45.

PEIRSON M. HALL
Judge United States District Court

[Endorsed]: Filed Aug. 27, 1945. [12]

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE WHY WRIT SHOULD NOT ISSUE

I, Albert Del Guercio, District Director, United States Department of Justice, Immigration and Naturalization Service, Los Angeles, California, District No. 16, Respondent herein, for my return to order to show cause why writ of habeas corpus should not issue in the above case state:

I.

That Jose Audon Salazar Delgadillo, hereinafter referred to as the Petitioner, is not being illegally restrained by me of his liberty but is in my custody under proper and lawful authority.

II.

On August 25, 1945 the Petitioner was surrendered into my custody under authority of an outstanding warrant of deportation dated May 26, 1945 issued under the authority of the Attorney General, directing the deportation of the Petitioner to Mexico. There is attached hereto as a part of this Return and marked Exhibit "A", copy of the said warrant of deportation. [13]

III.

Respondent further states that Petitioner was accorded a hearing in conformity with law to determine his right to be and remain in the United States. A copy of the hearing is attached hereto as a part of this Return and

marked Exhibit "B". The hearing accorded Petitioner was reviewed by the Board of Immigration Appeals, Washington, D. C., and copy of its order dated May 26, 1945 is also attached hereto as a part of this Return and marked Exhibit "C".

IV.

The respondent further states that motion on behalf of the Petitioner to reopen the deportation proceedings was denied by the Board of Immigration Appeals, Washington, D. C., on July 6, 1945. A copy of the order of the Board of Immigration Appeals dated July 6, 1945 denying motion of Petitioner to reopen is attached hereto as a part of this Return and marked Exhibit "D".

Wherefore, I, Albert Del Guercio, District Director, United States Department of Justice, Immigration and Naturalization Service, District No. 16, pray that the said petition for issuance of writ of habeas corpus in the case of the Petitioner, Jose Audon Salazar Delgadillo, be denied.

ALBERT DEL GUERCIO
District Director
United States Department of Justice
Immigration and Naturalization Service
District No. 16 [14]

[Verified.] [15]

[RESPONDENT'S EXHIBIT "A"]

Form I-205
(Old W:4a)

Immigration and Naturalization

UNITED STATES OF AMERICA
Department of Justice
~~Washington~~
Philadelphia, Pa.

WARRANT—DEPORTATION OF ALIEN

23-110042

No. A-1125010

To: District Director of Immigration and Naturalization, Los Angeles, California

Or to any Officer or Employee of the United States Immigration and Naturalization Service.

Whereas, after due hearing before an authorized immigrant inspector, and upon the basis thereof, an order has been duly made that the alien Jose Audon Salazar Delgadillo who entered the United States at Miami, Florida on - - - - - - the 19th day of July, 1942 is subject to deportation under the following provisions of the laws of the United States, to wit: The Act of Feb. 5, 1917, in that on or after May 1, 1917, he has been sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry, to wit: Robbery, 2nd.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his direction, do hereby command you to deport the said alien

to Mexico, at the expenses of the appropriation, "Salaries and Expenses, Immigration and Naturalization Service, 1945", including the expenses of an attendant, if necessary.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 26th day of May, 1945.

Herman R. Landon,
Herman R. Landon, Chief
Exclusion and Expulsion Section

md [16]

[RESPONDENT'S EXHIBIT "B"]

U. S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
San Francisco, California

San Francisco No. 12020/35467

Central Office No. A. R. 1125010

OPINION OF THE PRESIDING INSPECTOR

In re: Jose Audon Salazasar Delgadillo

Charges:

Warrant: The Act of February 5, 1917, in that, on or after May 1, 1917, he has been sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry, to wit: Robbery, 2nd.

Lodged: None.

I. Discussion of the Evidence

Respondent is a native and citizen of Mexico, 22 years of age (p. 4); he testified he last entered the United

States at the port of Miami, Florida, July 19, 1942 via airplane from Havana, Cuba. He stated he was admitted at Miami, Florida, for a period of thirty days to reship out of the United States, (p. 6). Exhibit 5 is a verification of arrival of the respondent, which shows that he was admitted on July 19, 1942 at the port of Miami, Florida, in transit, for a period less than thirty days to reship foreign from the port of San Pedro, California, which respondent admits pertains to him and his last arrival into the United States, (p. 13).

Respondent testified he first went to New Orleans, La., and was paid off there; then went straight to San Pedro, California, where he shipped out on the S. S. "Cinco" to Pearl Harbor, T. H.; returned to the Mainland again in 1943 and then shipped out on the S. S. "Dearborn" to Hawaii, returning in December, 1943 or January, 1944 (p. 6).

Respondent testified that he first entered the United States in 1922, accompanied by his parents; that he had remained in the United States continuously until he shipped out as a seaman on the "Andrew Jackson" in 1942 (p. 7); that while at sea, the "Andrew Jackson" was torpedoed and he was picked up and taken to Havana, Cuba (p. 6); that he remained at Havana, Cuba, one week, being taken care of by the American Consul (p. 14).

Exhibit 4 is a sworn statement from the mother of the respondent, stating that he had been in the United States since he was a year old, and he joined the Merchant Marine in 1942 (p. 12). Exhibit 6 is a copy of the certificate of arrival, showing Audon Salazar was lawfully admitted

to the United States for permanent residence at the port of El Paso, Texas, on January 19, 1923, which the respondent admits pertains to him and his first arrival in the United States, (p. 14).

It would appear from the above evidence that the respondent was entitled to admission at the time of his last entry at the port of Miami, Florida, on July 19, 1942, as a returning resident.

Exhibit 2 is a copy of the police arrest record as contained in the indices in the Los Angeles County record and Identification Bureau, which respondent testified pertained to him with the exception of two arrests, one December 4, 1942 and one December 18, 1942. Exhibit 3 is a certified copy of Information and Commitment, covering the conviction of Jose A. Delgadillo on March 27, 1944, wherein the defendant was sentenced to imprisonment in the California State Prison, San Quentin, California, for one year to life for the crime of robbery second, committed on or about January 22, 1944, County of Los Angeles, State of California, which respondent admitted pertains to him and his conviction and sentence. The offense committed by the respondent for which he was sentenced to a term of imprisonment for one year or more occurred within a period of five years after his last entry into the United States. The warrant charge is therefore sustained.

II. Proposed Findings of Fact

Upon the basis of all the evidence presented, it is found:

(1) That the respondent is an alien, native and citizen of Mexico;

(2) That the respondent last entered the United States July 19, 1942 at the port of Miami, Florida;

(3) That the respondent was admitted in transit for less than thirty days to reship foreign;

(4) That the respondent was first admitted to the United States on January 19, 1923 at the port of El Paso, Texas, for permanent residence;

(5) That the respondent has resided continuously in the United States since January 19, 1923;

(6) That the respondent was convicted of robbery second in the County of Los Angeles, California, committed on or about January 22, 1944;

(7) That for this offense respondent was sentenced on March 27, 1944, to imprisonment in the State Prison at San Quentin, California, for a term of one year to life.

12020/35467 7/13/44 [18]

III. Proposed Conclusions of Law

Upon the basis of the foregoing findings of fact, it is concluded:

(1) That under Section 19 of the Immigration Act of 1917, the respondent is subject to deportation on the ground that on or after May 1, 1917 he has been sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry, to wit: Robbery, second.

(2) That under Section 20 of the Immigration Act of 1917, the respondent is deportable to Mexico at Government expense.

IV. Other Factors

Respondent is inmate No. 71464 of the California State Prison at San Quentin, California. He is single, having never married. Respondent's father is deceased and buried in the United States. His mother, a native and citizen of Mexico, is now residing in southern California. He has a married sister living in the United States and one brother residing with his mother. Respondent stated he has relatives in Mexico, sisters of his mother, but their names and addresses are unknown to him, (p. 6).

Since the charge upon which respondent is deportable places him within a class from which discretionary relief is barred by Section 19(d) of the Immigration Act of 1917, as amended, he was not permitted to apply for voluntary departure or suspension.

V. Proposed Order

It is recommended that respondent be deported to Mexico at Government expense on the charge stated in the warrant of arrest.

It is further recommended that execution of the warrant of deportation be deferred until the alien is released from imprisonment.

John B. Beck
John B. Beck,
Presiding Inspector

Dated:
July 13, 1944
12020/35467

7/13/44 [19]

U. S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
San Francisco 12 California

Central Office No.
AR-1125010

San Francisco No.
12020/35467

San Quentin Prison
No. 71464

Hearing
Date: July 8, 1944
Place: California State Prison, San Quentin, California
Presiding Inspector and Recorder: John B. Beck
Alien: Jose Audon Salazar Delgadillo

By Presiding Inspector to Alien:

Q Are you able to speak and understand the English language?

A Yes.

Q What is your true and correct name?

A Jose Audon Salazar Delgadillo.

Q I have before me warrant of arrest No. AR-1125010, issued at Philadelphia, Pa. on June 23, 1944, wherein it is charged that Jose Audon Salazar Delgadillo who entered this country at Miami, Florida on the 19th day of July, 1942 appears to be subject to deportation for the reason that he is in the United States in violation of the Act of Feb. 5, 1917, in that on or after May 1, 1917, he has been sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry, to wit: Robbery, 2nd. You may now inspect the warrant and a copy is given to you to retain.

Inspector hands warrant and a copy to the alien.

A copy of this warrant is made a part of the record and attached to same as Exhibit No. 1. Do you understand?

A Yes.

Q The purpose of this hearing is to inquire into your right to be and remain in the United States, and particularly to afford you an opportunity to show cause, if any there be, why you should not be deported from the United States. You are advised that under these proceedings you have the right to representation by counsel of your own selection, which counsel may be an attorney at law or other person of good moral character and reputation who has been accepted to practice before this Service by the Board of Immigration Appeals in Washington, D. C. Do you desire to be so represented?

A No, I do not wish to be represented by counsel.

Alien returns the original warrant to Presiding Inspector.

Q Do you consent to the inspector who conducted the investigation in your case acting as presiding inspector?

A Yes. [20]

Q You are also informed that you have the right to a reasonable time in order that you might arrange for your defense. The hearing is therefore at this time recessed and will be continued on Monday, July 10, 1944, at 10:45 a. m. at San Quentin Prison. Do you understand?

A Yes.

Certified true and correct copy of the record of hearing made in this case by Inspector John B. Beck.

Thomas Maples—Stenographer

12020/35467

7/8/44 [21]

U. S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
San Francisco 12 California

Central Office No.
AR-1125010

San Francisco No.
12020/35467

San Quentin Prison
No. 71464

Continued Hearing:

Date: July 10, 1944

Place: California State Prison, San Quentin, Calif.

Presiding Inspector: John B. Beck

Stenographer: Thomas Maples

Alien: Jose Audon Salazar Delgadillo

By Presiding Inspector to Alien:

Q What is your full and true name?

A Jose Audon Salazar Delgadillo.

Q Have you ever used or been known by any other name?

A No.

Q Are you identical with the Jose Audon Salazar Delgadillo who appeared before this Service on July 8, 1944?

A Yes.

Q Do you solemnly swear that all the statements you are about to make at this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

A I do.

Q. You are informed that if you wilfully and knowingly give false testimony at this proceeding you may be prosecuted for perjury, the penalty for which is a fine

of not more than $2,000, and imprisonment of not more than five years. Do you understand?

A Yes.

Q At the time you appeared before this Service on July 8, 1944, you were permitted to inspect the warrant of arrest, and a copy was given to you to retain. Is that correct?

A Yes.

Q Do you fully understand the charge contained in the warrant of arrest?

A Yes.

Q You are informed that this proceeding is to show cause why you should not be deported from this country upon the charge contained in the warrant. Do you understand?

A Yes.

12020/35467 7/10/44 [22]

Q You are also informed that under these proceedings you have the right to representation by counsel at your own expense and selection, which counsel may be an attorney at law or other person of good moral character and reputation, who has been permitted to practice before this Service by the Board of Immigration Appeals in Washington, D. C. Do you desire to be so represented?

A No.

Q Do you waive your right to representation by counsel at this time?

A Yes.

Q Are you now ready and willing to proceed with this hearing?

A Yes.

Q You are further informed that inasmuch as you have waived your right to representation by counsel, you

will be permitted to offer evidence to meet any evidence presented or adduced by the Government, to cross-examine witnesses called by the Government, and to make objections, which shall be entered in the record. Do you understand?

A Yes.

Q Where do you now reside?

A I am San Quentin Prison inmate No. 71464.

Q What is your age?

A I am 22 years of age.

Q What are the date and place of your birth?

A I was born on July 30, 1921 at Durango, Durango, Mexico. I am a citizen of Mexico and of the Mexican race.

Q Do you have any document in the nature of a passport which will establish your claim to Mexican citizenship?

A I have a card which I used. It shows that I am a Mexican citizen. I have sent for it. It is at home but it has not arrived yet. I also have my first papers where I applied for citizenship in the United States. They are at home. I have sent for them.

Q What is the name of the nearest large city, its distance and direction from the place of your birth?

A Durango is a large city.

Q Did you ever have a birth certificate?

A No. My mother told me it was burned up in the house after I came to the United States.

Q Do you know whether or not your birth is registered in the town in which you were born?

A I don't know; I think it is.

Q What is your religion?

A Roman Catholic.

Q Were you baptized in the Roman Catholic Church?

A Yes, in infancy, in my home town.

Q Did you attend the Roman Catholic Church in Mexico?

A I did not attend in Mexico, because I was too small, but I attended at San Pedro, California.

Q What schools have you attended in the country of your birth?

A None; I was too small.

Q What schools have you attended in the United States?

A I went to Grammar School, Junior High and High School in San Pedro, California.

Q Are you able to read and write the English language?

A Yes.

Q Are you able to read and write in the Spanish language?

A Just a little.

Q What was your last address in your native town?

A I don't know the address; just Durango.

Q What was your last address in the United States?

A 410 North Harbor Boulevard, San Pedro, California.

Q What is your occupation?

A A little bit of everything—shipyard worker, cannery and a seaman.

Q What was your last employment?

A Seaman.

Q What was your last foreign address?

A My last foreign address was my home town, although I was in Havana, Cuba right after the ship on

which I was employed was torpedoed. I was there for one week in 1942.

Q Are your parents living?

A Yes, they are living in San Pedro, California.

Q What are the name, birthplace and citizenship of your father?

A My father's name is Raymundo Delgadillo. He was born in Mexico. He is dead and was buried in Wilmington, California. He died in 1934.

Q What are your mother's name, citizenship and present address?

A My mother's name was Petra Bautista. She was born in Mexico, is a Mexican citizen and is living at 410 North Harbor Blvd., San Pedro, California.

Q Has either parent ever resided in the United States?

A Yes, both have resided here since 1922.

12020/35467 7/10/44 [24]

Q Was your father ever naturalized in the United States?

A Not to my knowledge. I was pretty small when he died.

Q Do you have any brothers or sisters?

A I have a brother and sister. My brother's name is Luis. He was born in San Pedro, California. He is working in the cannery at Terminal Island, San Pedro, California and lives with my mother. My sister's name is Adelia. She is married and her married name is Pasquale and lives in San Pedro, Calif. I don't know her street address. She was born in San Pedro.

Q Do you have any relatives in the country of your nativity?

A My mother told me she had sisters living in Mexico. I don't know their addresses or their names.

Q Are you married or single?

A Single.

Q Have you ever married?

A No, sir.

Q When and where did you last enter the United States?

A I last entered the United States at the port of Miami, Florida on July 19, 1942 via airplane from Havana, Cuba. I was admitted at Miami, Florida to go to San Pedro, California to reship out of the United States. I was admitted for a period not to exceed 30 days.

Q At the time of your admission to the United States on July 19, 1942, had you been a seaman on any ship that had sailed from the United States?

A Yes, I shipped out on the SS "Andrew Jackson" from San Pedro, California and while at sea the "Andrew Jackson" was torpedoed and we were picked up and taken to Havana, Cuba. There were about 36 other boys in the crew and this happened off the coast of Cuba on July 12, 1942.

Q After you were admitted at Miami, Florida, where did you then go?

A From Miami, Florida we went to New Orleans and was paid off there and went straight to San Pedro, California where I shipped out on the SS "Cinco" and went to Pearl Harbor, T. H. I returned from there in 1943 and again shipped out on the SS "Dearborn" arriving at San Pedro on the same ship in December, 1943 or January 1944.

Q Did the SS "Dearborn" stop at any foreign port while you were a member of the crew?

A No. It went from San Pedro to Pearl Harbor and then returned to San Pedro.

Q Was this your last entry into the United States—in December 1943 or January, 1944, on the SS "Dearborn"?

A Yes.

12020/35467 7/10/44 [25]

Q Have you at any time prior to your last entry been inspected and admitted to the United States by immigration officers?

A I first entered the United States in 1922, when my parents brought me here. I remained in the United States continuously until I shipped out as a seaman on the ss "Andrew Jackson" in 1942.

Q Office file contains copy of a letter dated September 2, 1942 from our Central Office in Philadelphia, Pa., addressed to the District Director at Miami, Florida, which reads as follows:

> "Your 4315/35; Endorsement of July 22, 1942; Jose Andon Salizar y Delgaditto, John W. Barr, Leslie L. Hall, and Jens S. Ettrup. You are advised that the Department of State has waived nunc pro tunc, the passport and visa requirements in behalf of these aliens. Signed Earl G. Harrison, Commissioner, by Herman R. Landon, Acting Chief Warrant and Deportation Branch."

Does this pertain to your last entry into the United States via Miami, Florida?

A Yes.

Q Were the three other men whose names I have just read with you at that time?

A I don't remember these names.

Q How many times have you been arrested in the United States?

A About four times.

Q I will now show you copy of a letter received by this office which contains your police arrest record as contained in the indices of the Los Angeles City Record and Identification Bureau, and ask if these arrests pertain to you.

Alien reads police record as above stated.

A I don't remember being arrested for being drunk as listed 9-12-42 or *filed* $25.00 and 12 days, and I was not connected with the arrest listed 12-1-42, charged with Suspicion Assault with Deadly Weapon, or the arrest listed 12-18-42, charged with Suspicion Grand Theft Merchandise. Otherwise that record pertains to me.

Q You are informed that a copy of this letter is incorporated into the record and marked Exhibit No. 2. Do you understand?

A Yes.

Q There is presented here with certified copy of Information and Commitment No. 96243 covering the conviction of Jose A. Delgadillo on March 27, 1944 wherein the defendant was sentenced to imprisonment in the State Prison at San Quentin, California, for the term prescribed by law, for the crime of robbery, 2nd degree, committed on or about January 22, 1944 in the County of Los Angeles, State of California. Are you the person referred to in this document who was so convicted and sentenced?

A Yes.

Q What sentence did you receive?

A One year to life.

Q Did you plead guilty to this crime of robbery second degree?

A Yes.

Q You are informed that this document is incorporated into the record, made a part thereof and marked Exhibit No. 3. Do you understand?

A Yes.

Q Do you admit the commission of the crime of robbery second degree, for which you are now serving a term of imprisonment in this prison?

A Yes.

Q Your prison record, Exhibit No. 2, shows that you were arrested on the charge of suspicion of rape in November of 1942. Is this correct?

A Yes, I served six months in the Los Angeles County Jail for statutory rape in 1942. I served five months in jail and then released.

Q. When did you enter San Quentin Prison?

A On April 11, 1944.

Q When do you expect to go before the Prison Board to have your term decided?

A About October or November of this year.

Q Have you ever committed any crime for which you have not been punished or sentenced?

A No.

Q Have you ever used narcotics?

A No, sir.

Q Are you registered under the Alien Registration Act of 1940?

A I was registered in San Pedro and I think my card is in my property envelope here.

Note: Office file shows Alien Registration Receipt Card No. 1125010 issued to the alien.

Q Are you registered under the Selective Service and Training Act?

A Yes, and my classification is 2-B.

Q Do you own any property in the United States?

A No.

Q Do you owe any debt or does anyone owe you any debt?

A No.

Q Are you a party to any law suit or claim against anyone or does anyone have any claim pending against you?

A No.

12020/35467 7/10/44 [27]

Q Do you have any dependents in the United States

A Yes, my mother.

Q Were you helping to support your mother prior to your arrest and sentence to San Quentin Prison?

A Yes.

Q Do you have a bank account in the United States?

A No.

Q If you are ordered deported, where would you wish to be sent?

A To my native town in Mexico.

Q To anyone in particular?

A No, no one in particular.

Q Is there any reason why deportation should not be effected in your case?

A No.

Q Have you understood all the questions and statements made to you during this hearing?

A Yes.

Q Is there anything further that you wish to state at this time?

A Yes. I don't want to be deported. One reason is that I have my mother here that I must look after, and if they deport me it would be just like beginning all over. I have no people in Mexico and no work.

Q You are informed that a copy of the proposed findings of fact, conclusions of law and order will be furnished to you as soon as completed, and you will be allowed a reasonable time, not to exceed ten days, in which to file exceptions thereto. Do you understand?

A Yes.

Q I now advise you that under the Act of March 4, 1929, as amended, you will if ordered deported, and thereafter enter or attempt to enter the United States be guilty of a felony and upon conviction be liable to imprisonment of not more than two years or a fine of not more than $1,000, or both such fine and imprisonment, unless following your departure from the United States in pursuance of an order of deportation you receive permission from the Attorney General to apply for admission after one year from the date of your departure. Do you understand?

A Yes.

Q You are further informed that any alien who is subject to exclusion from admission to the United States under this Act will not be entitled to any of the landing privileges allowed by law to seamen. If such alien has previously been arrested and ordered deported and enters or attempts to enter the United States on or after March 4, 1929, he shall be guilty of a felony and be subject to the penalties prescribed. In the case of any alien who is employed upon a vessel arriving in the United States, under Section 1 of this Act, it shall be the duty of the Inspector to order such alien detained on board, as provided for in Sections 19 and 20 of the Immigration Act of 1924. Do you understand?

A Yes.

Personal Description: Height 5' 6½"; weight 162 pounds; eyes, brown; hair, black; face, oval; nose, large; mouth, regular; complexion, dark. Marks: None.

Respondent Serving Sentence in the California State Prison at San Quentin, California, at the Expense of the State.

Hearing Closed, to Be Reopened by the Government Should It Be Deemed Advisable to Introduce Further Evidence.

Exhibits 1 to 3 Attached.

Certified true and correct transcript of my notes taken in this case.

Thomas Maples
Thomas Maples—Stenographer
Book No. 18968

12020/35467 7/10/44 [29]

U. S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
San Francisco 12 California

Central Office No.
AR-1125010

San Francisco No.
12020/35467

San Quentin Prison
No. 71464

Continued Hearing:

Date: August 21, 1944

Place: California State Prison, San Quentin, Calif.

Presiding Inspector: John B. Beck

Stenographer: Thomas Maples

Alien: Jose Audon Salazar Delgadillo

By Presiding Inspector to Alien:

Q What is your true and correct name?

A Jose Audon Salazar Delgadillo.

Q Are you identical with the Jose Audon Salazar Delgadillo who appeared before this Service on July 8 and 10, 1944?

A Yes.

Q Do you solemnly swear that all the statements you are about to make at this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

A I do.

Q You are informed that if you wilfully and knowingly give false testimony at this proceeding you may be prosecuted for perjury, the penalty for which is a fine of not more than $2,000, and imprisonment of not more than five years. Do you understand?

A Yes.

Q You are informed that your case is reopened in order that additional evidence may be incorporated into the record relative to your residence in the United States prior to your last entry. Do you understand?

A Yes.

Q You are informed that this proceeding is to show cause why you should not be deported from this country upon the charge contained in the warrant and upon any additional charge that may be lodged against you. Do you understand?

A Yes.

12020/35467 8/21/44 [30]

Q You are further informed that under these proceedings you have the right to representation by counsel at your own expense and selection, which counsel may be an attorney at law or other person of good moral character and reputation, who has been permitted to practice

before this Service by the Board of Immigration Appeals in Washington, D. C. Do you desire to be so represented?

A No.

Q Do you waive your right to representation by counsel at this time?

A Yes.

Q Are you now ready and willing to proceed with this hearing?

A Yes.

Q You are further informed that inasmuch as you have waived your right to representation by counsel, you will be permitted to offer evidence to meet any evidence presented or adduced by the Government, to cross-examine witnesses called by the Government, and to make objections, which will be entered in the record. Do you understand?

A Yes.

Q Has there been any change in your status since you last appeared before this Service?

A No, I am still San Quentin Prison inmate No. 71464.

Q When you appeared before this Service on July 10, 1944, you were asked if at any time prior to your last entry you had been inspected and admitted to the United States by immigration officers, and you replied: "I first entered the United States in 1922, when my parents brought me here. I remained in the United States continuously until I shipped out as a seaman on the SS "Andrew Jackson" in 1942." Is that correct?

A Yes.

Q San Francisco file contains letter dated Wilmington, Calif, July 25, 1944, addressed to the Immigration Department, San Francisco, Calif., and signed by Mrs. Petra B. Delgadillo, and sworn to before a Notary Public

in the County of Los Angeles on the 25th day of July, 1944, which I now hand you to read and ask if the contents of this letter pertains to you.

(Letter is handed to the respondent which he reads and returns)

A Yes, that applies to me.

Q Is Mrs. Petra B. Delgadillo, the signer of this letter, your blood-mother?

A Yes.

Q You are informed that this letter is incorporated into the record and marked Exhibit No. 4. Do you understand?

A Yes.

12020/35467 8/21/44 [31]

Q When you appeared before this Service on July 10, 1944, there was read into the record a letter from our Central Office, the substance of which was information that the Department of State had waived nunc pro tunc, the passport and visa requirements in your behalf and three other aliens who arrived at Miami, Florida on July 19, 1942 via airplane from Havana, Cuba. Is that correct?

A Yes.

Q There is presented a letter dated Miami, Florida, July 21, 1942, addressed to the District Director, Miami, Florida, which I now hand to you to read:

Respondent reads letter.

Are you the Delgadillo whom this letter states was admitted on July 18, 1942 in transit for less than 30 days to reship foreign from the port of San Pedro, California?

A Yes, that pertains to me and my last arrival.

Q You are informed that a copy of this letter is incorporated into the record and marked Exhibit No. 5. Do you understand?

A Yes.

Q When did you first sign on a ship as a member of the crew to depart from the United States?

A The "Andrew Jackson" which was torpedoed in 1942 outside of Cuba was the first ship that I ever shipped out on as a seaman.

Q Had you lived in the United States continuously since you first arrived in the United States in 1922?

A Yes, I have lived in San Pedro, California practically all my life.

Q You mean that you have lived in San Pedro, California ever since you were brought to this country by your mother?

A Yes.

Q During the period from 1922, when you first came to this country, until the time that you signed on the "Andrew Jackson" as a seaman been out of the United States for any reason?

A No, I have never been out of the United States.

Q When did you signed on the "Andrew Jackson" at San Pedro or Wilmington, where was that ship destined to when it left that port?

A I don't know—I was not told.

Q Was it under American registry?

A Yes.

Q Prior to your signing on the ship, had you secured seamen's documents from the Merchant Marine?

A Yes.

Q What became of those papers?

A They were all lost when my boat was torpedoed.

Q How long were you in the water before you were picked up?

A I would say two days, in a life-boat. The ship was torpedoed about 9 o'clock and we were picked up about 3 o'clock in the afternoon.

Q How many others were with you?

A When we landed at the beach there were about 36 of us.

Q How long were you in Cuba when you were brought to the United States?

A One week. We were taken care of by the American Consul in Cuba.

Q When your ship left San Pedro destined to its unknown destination, did you pass through the Panama Canal?

A We were anchored outside the canal before we entered.

Q Did your boat stop at Panama City dock long or didn't you dock there?

A Well we anchored outside. We got shore leave at Panama City.

Q Were you told when you signed the ship's articles as a member of the crew where your boat was destined?

A No, we were not told anything.

Q When you appeared before this Service on July 10, 1944, you testified that you attended the Grammar

School, Junior High and High School in San Pedro, Calif. Is that correct?

A Yes.

Q What is the total number of years you attended school?

A Eight or nine years.

Q After you left school, did you go to work?

A Yes, I was working here and there, every place—ship scaler and painter; doing all kinds of work.

Q Were you living at home during this time?

A Yes.

Q Have you ever lived any other place than home while you have been in California?

A No.

Q Prior to your arrest and conviction on the charge of statutory rape in 1942, had you ever been arrested before?

A Yes, I was arrested for being drunk two or three times.

Q Los Angeles file No. 23-110042 contains form 161—Certificate of Arrival, showing Audon Salazar was admitted at the port of El Paso, Texas on January 19, 1923 for permanent residence and is signed December 27, 1941 at El Paso, Texas by H. M. Blackwell, Inspector. which I now ask you read and state whether this pertains to you and your first arrival in the United States?

A Yes it does.

Q You are informed that a copy of this document is incorporated into the record and marked Exhibit No. 6. Do you understand?

A Yes.

Q Have you understood all the questions asked and statements made to you during this hearing?

A Yes.

Q Is there anything further that you wish to state?

A No.

Q You are informed that a copy of the proposed findings of fact, conclusions of law and order will be furnished to you as soon as completed, and you will be allowed a reasonable time, not to exceed ten days, in which to file exceptions thereto. Do you understand?

A Yes.

Personal Description—See page 10 of this record.

Q You are again informed that under the Act of March 4, 1929, as amended, you will if ordered deported, and thereafter enter or attempt to enter the United States be guilty of a felony and upon conviction be liable to imprisonment of not more than two years or a fine of not more than $1,000, or both such fine and imprisonment, unless following your departure from the United States in pursuance of an order of deportation you receive permission from the Attorney General to apply for admission after one year from the date of your departure. Do you understand?

A Yes.

Q You are also informed that any alien who is subject to exclusion from admission to the United States under

this Act will not be entitled to any of the landing privileges allowed by law to seamen. If such alien has previously been arrested and ordered deported and enters or attempts to enter the United States on or after March 4, 1929, he shall be guilty of a felony and be subject to the penalties prescribed. In the case of any alien who is employed upon a vessel arriving in the United States under Section 1 of this Act, it shall be the duty of the Inspector to order such alien detained on board, as provided for in Sections 19 and 20 of the Immigration Act of 1924. Do you understand?

A Yes.

Respondent Serving Sentence in the California State Prison at San Quentin, California, at the Expense of the State.

Hearing Closed, to Be Reopened by the Government Should It Be Deemed Advisable to Introduce Further Evidence.

Exhibits 1 to 6 Attached.

Certified true and correct transcript of my notes taken in this case.

Thomas Maples

Thomas Maples—Stenographer

Book 19029

12020/35467 8/21/44 [34]

[Exhibit No. 1]

Form I-200
(Old W-11)

U. S. Department of Justice
Immigration and Naturalization Service

WARRANT

For Arrest of Alien

UNITED STATES OF AMERICA
Department of Justice
~~Washington~~
Philadelphia, Pa.

No. 12020/35467
AR-1125010

To District Director of Immigration and Naturalization, San Francisco, Calif.

Or to any Immigrant Inspector in the service of the United States.

Whereas, from evidence submitted to me, it appears that the alien Jose Audon Salazar Delgadillo who entered this country at Miami, Florida on the 19th day of July, 1942 has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit: The Act of Feb. 5, 1917, in that on or after May 1, 1917, he has been sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude

committed within five years after entry, to wit: Robbery, 2nd.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1944." Pending further proceedings, the alien should be permitted to remain in his present location without expense to the Immigration and Naturalization Service.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 23rd day of June, 1944.

Herman F. Landon

Herman F. Landon, Chief
Exclusion and Expulsion Section

Warrant served at California State Prison, San Quentin, California, on Jul. 8, 1944, by John B. Beck, Immigrant Inspector. Alien advised as to right to counsel.

Detainer filed 7/10/44. Docketed.

[Endorsed]: Exhibit No. 1. File No. 12020/35467. John B. Beck, Immigrant Inspector. [35]

[Exhibit No. 2]

L. A. File 23-110042
May 15, 1944

Albert Del Guercio, District Director, L. A.

Madison St. Brooks, Immigrant Inspector, Investigation Section, L. A.

Jose Audon Delgadillo

Attention: Chief, Investigation Section.

Reference is made to letter dated April 29, 1944 from the Chief, Expulsion Section at San Francisco, San Francisco File No. 12021/1, disclosing subject testified that he was committed to the Los Angeles County Jail in 1942 for a period of six months for Rape, and requesting any file that we may have be forwarded to that office.

The indices at the Los Angeles City Record and Identification Bureau reflected the following record of arrests which is believed to pertain to the subject:

No. 53652 and R 73723

Delgadillo, Jose Audon, Del Gado, Jose A.; Delgadillo, Aldun, J.

Fingerprint Classification: 11 S 1 R OIOO 14
S 1 R IIOO 18

Description: Balck hair; brown eyes; 5'6"; 165#; 22 yrs in 1944.

4-17-40: Drunk; $10 X 5 days; Division 30 4-18-40.

11-30-40: Drunk; $10 X 5 days; Paid; Div. 31; 12-2-40.

9-12-42: Drunk; $25 X 12 dys; Spent; Div. 31; 9-14-42.

11- 4-42: Suspicion of Rape to L. A. Co.; 1-4-43; 180 Co. Jail; Department 44.

12- 1-42: Suspicion Assault with Deadly Weapon; Released 12-2-42.

12-18-42: Suspicion Grand Theft Merchandise; Released 12-22-42.

1-23-44: Suspicion 2-11 P. C. (Robbery) to L. A. County 3-27-44; Long Beach Superior Court Case No. 96243; Robbery Second; to San Quentin.

The indices at the County Record and Identification Bureau failed to reflect any additional arrests concerning subject. [36]

At the Superior Court Clerk's Office the reporting inspector was advised, concerning the arrest on January 23, 1944 for Robbery, that three other principles were involved in the case with the subject and that all of the dispositions have not, as yet, been handed down concerning the other principles, and it was not anticipated that the case would be available to secure certified copies of the indictment, conviction, and sentence until after the week of May 22, 1944.

The reporting inspector intends, when the case is available, to secure certified copies of the indictment, sentence and conviction concerning the arrest in January 1944 to be forwarded to the San Francisco Office of this Service.

Attached hereto are photographs of the subject secured from the City and County Record and Identification Bureaus.

[Endorsed]: Exhibit No. 2. File No. 12020/35467. John B. Beck, Immigrant Inspector. [37]

[Exhibit No. 3]

In the Superior Court of the State of California
in and for the County of Los Angeles

Superior Court No. 96243

The People of the State of California

Plaintiff

vs.

Joe R. Nunez, Jose A. Delgadillo, Jesus Martinez and Lehandro A. Badajos

Defendants

INFORMATION

Robbery

The said Joe R. Nunez, Jose A. Delgadillo, Jesus Martinez and Lehandro A. Badajos are accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Robbery, a felony, committed as follows: That the said Joe R. Nunez, Jose A. Delgadillo, Jesus Martinez and Lehandro A. Badajos on or about the 22nd day of January, 1944, at and in the County of Los Angeles, State of California, did willfully, unlawfully, feloniously and forcibly take from the person and immediate presence of one John Christova Mondagoan the following described personal property, to-wit:

Forty-four Dollars ($44.00) in money, lawful money of the United States in the possession of John Christova Mondragoan which said taking was then and there without the consent and against the will of the said John Christova Mondragoan and was then and there accomplished, as aforesaid, by the defendants by means of force used by said defendants upon and against the said John

Christova Mondragoan and by said defendants then and there putting the said John Christova Mondragoan in fear.

Contrary to the form, force and effect of the statute in such cases made and provided, and against the peace and dignity of the people of the State of California.

FRED N. HOWSER
District Attorney of and for the County of Los Angeles
State of California

By Harry Keeler Deputy [38]

No. 96243 Dept. C

Superior Court
County of Los Angeles

The People of the State of California
Against
Joe R. Nunez, et al

Information
Robbery

Filed in open Superior Court of the County of Los Angeles, State of California, on motion of the District Attorney of said Los Angeles County this,

15th day of Feb. 1944

J. F. MORONEY
By Lily L. Lair Deputy
FRED N. HOWSER
District Attorney [39]

No. 96243

In the Superior Court of the State of California
in and for the County of Los Angeles

Present: Hon. Leslie E. Still, Judge.

The People of the State of California

vs.

Jose A. Delgadillo

JUDGMENT

Whereas the said Jose A. Delgadillo having duly pleaded guilty in this Court of the crime of Robbery, a felony, as charged in the information, which the Court found to be Robbery of the second degree

It is Therefore Ordered, Adjudged and Decreed that the said Jose A. Delgadillo be punished by imprisonment in the State Prison for the term prescribed by law.

It is further Ordered that the defendant be remanded to the custody of the Sheriff of the County of Los Angeles, to be by him delivered into the custody of the Warden of the State Prison of the State of California at San Quentin.

Done in open Court this 27th day of March, 1944.

State of California,)
County of Los Angeles) SS No. 96243

I, J. F. Moroney, County Clerk and ex-officio Clerk of the Superior Court within and for the county and state aforesaid, do hereby certify the foregoing to be a correct copy of the original Information and Judgment in the

case of The People of the State of California versus Jose A. Delgadillo on file and/or of record in my office, and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Superior Court this 25th day of May, 1944.

J. F. MORONEY, County Clerk
By: (Signed) M. E. Payne, Deputy [40]

Office of the County Clerk)
of the Said County of Los Angeles)

I, J. F. Moroney, County Clerk of the said County of Los Angeles, and ex-officio Clerk of the Superior Court thereof, do hereby certify the foregoing to be a true and correct copy of the judgment duly made and entered on the Minutes of the Superior Court in the above entitled action, and that I have compared the same with the original, and that the same is a correct transcript therefrom and of the whole thereof.

Attest my hand and the seal of the said Superior Court.

[Endorsed]: Exhibit No. 3. File No. 12020/35467. John B. Beck, Immigrant Inspector. [41]

[Exhibit No. 4]

Copy

Wilmington, California.
July 25, 1944

Immigration Department
San Francisco, California

In Re: 71464 Delgadillo
Subject: Immig.-Deport

Attention: J. O. Short, Class-& Parole Interviewer.

Gentlemen:

I am the mother of Jose A. Delgadillo, and am writing this letter in answer to yours of the 13th inst., regarding his being torpedoed in the West Indies. He was in the water from 11 P.M. until 4-PM with several others of the crew. He was detained in Cuba, for two weeks with the others of the crew.

He has been in the United States since he was a year old. He joined the Merchant Marines in 1942 (October).

I do appeal to you not to deport him to Mexico.

Trusting that you will be kind enough to give this your immediate attention,

Yours truly,
(Signed) Petra B. Delgadillo
Mrs. Petra B. Delgadillo,
1114 E. Sandison, Wilmington, California

Subscribed and sworn to before me this 25th day of July, 1944.

(Seal) (Signed) Ida M. Flickinger
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Oct. 2, 1944.

[Endorsed]: Exhibit No. 4. [42]

[Exhibit No. 5]

DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
Miami, Florida

July 21, 1942

1042/1-A

District Director,
Immigration and Naturalization Service,
Miami, Florida.

This is to advise that the following named alien seamen, survivors of torpedoed vessels, arrived at this port as passengers without being in possession of passports or visas.

Jose Andon Salizar y Delgaditto; native of Mexico; survivor of the American SS. "Andrew Jackson", sunk July 12, 1942 off Cuba. Admitted on July 19, 1942 in transit for less than 30 days to reship foreign from the Port of San Pedro, California.

John W. Barr; citizen of Canada; survivor of the ss. "West Ira", sunk off Barbadoes June 20, 1942.

Presented first citizen papers No. 1506, issued April 26, 1937, at Vesalia, California.

Leslie L. Hall; 38; British; survivor of the SS "West Ira" sunk June 20, 1942; admitted as returning resident, exhibiting first citizen papers No. 414022, issued May 3, 1938 at New York City.

Jens S. Ettrup; 52; native of Denmark; survivor of the SS. "West Ira", sunk June 20, 1942. Admitted for less than thirty days in transit to reship foreign from the Port of New York City.

It is respectfully suggested that the State Department be requested to issue nunc pro tunc waiver in the case of these seamen.

(Signed) Francis J. H. Dever
Francis J. H. Dever
Inspector in Charge

4315/35 July 22, 1942

Official copy, in quadruplicate, respectfully furnished the Commissioner, Immigration and Naturalization Service, Philadelphia, with suggestion that the State Department be requested to issue nunc pro tunc waiver in the case of these seamen.

W. W. EYSTER,
District Director
Miami District

[Endorsed]: Exhibit No. 5. File No. 12020/35467. John B. Beck, Immigrant Inspector. [43]

[Exhibit No. 6]

Copy

U. S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

No. 23-110042

CERTIFICATE OF ARRIVAL

I hereby certify that the immigration records show that the alien named below arrived at the port, on the date, and in the manner shown, and was lawfully admitted to the United States of America for permanent residence.

Name: Audon Salazar
Port of entry: El Paso, Texas
Date: January 19, 1923
Manner of arrival: El Paso Electric Railway

I further certify that this certificate of arrival is issued under authority of, and in conformity with, the provisions of the Act of June 29, 1906, as amended, solely for the use of the alien herein named and only for naturalization purposes.

In Witness Whereof, this Certificate of Arrival is issued December 27, 1941 at El Paso, Texas.

(Signed) H. M. Blackwell
H. M. Blackwell
Inspector in Charge

Form 161-Im.

[Endorsed]: Exhibit No. 6. [44]

[RESPONDENT'S EXHIBIT "C"]

May 26 1945

[Stamped]: Copy District Director.

1125010—San Francisco

In re: Jose Audon Salazar Delgadillo.

In Deportation proceedings.

In Behalf of Respondent: No one.

Charge: Warrant—Act of 1917—Sentenced to imprisonment for one year or more for crime involving moral turpitude, to wit: Robbery, 2nd Decree, committed within five years after entry.

Application: That he be not deported.

Detention Status: Serving prison sentence.

Upon consideration of the entire record, the findings of fact and conclusions of law proposed by the Presiding Inspector and served on the alien on August 30, 1944, are hereby adopted.

The alien's mother in her affidavit dated July 25, 1944, requests that the alien be not deported. However, since he is now serving a prison sentence for the crime of robbery committed within five years of his last entry, he is deportable and we shall enter an order to that effect.

Order: It is ordered that the alien be deported to Mexico, at Government expense, on the charge in the warrant of arrest.

It is Further ordered that execution of the warrant be deferred until alien is released from imprisonment.

FMS:LH Member. [45]

[RESPONDENT'S EXHIBIT "D"]

[Stamped]: Copy District Director.

File: 11-5010 Jul 6 1945.

In re: Jose Audon Salazar Delgadillo

In Deportation Proceedings.

In Behalf of Respondent: Albert Lax, Attorney.

On May 26, 1945, we ordered this alien, a native and citizen of Mexico, deported to Mexico on the ground he was in the United States in violation of the Act of 1917 in that he had been sentenced to imprisonment for a year or more for a crime involving moral turpiture committed within five years after entry, to-wit: Robbery. It was found that he last entered the United States by plane on July 19, 1942.

Counsel for the alien on motion requests that the proceedings be reopened and reconsidered. Counsel maintains that the respondent's last entry was not an entry within the meaning of the immigration laws. It is stated, and the record indicates that the respondent shipped coastwise on the "Andrew Jackson," and that while at sea the vessel was torpedoed and he was rescued and taken to Cuba. He remained in Cuba one week, and later entered at Miami on July 19, 1942, by airplane and was admitted for 30 days to reship. The crime which forms the grounds for deportation was committed on or about January 22, 1944.

Within the meaning of the immigration laws an "entry" is an arrival from any foreign port or place. The fact that the respondent did not willingly go to Cuba is not material.

Order: The motion to reopen this case is denied.

LW:ajt Chairman

[Endorsed]: Filed Sep. 4, 1945. [46]

[Title of District Court and Cause.]

PETITIONER'S TRAVERSE TO RETURN TO ORDER TO SHOW CAUSE

Petitioner, Jose Audon Salazar Delgadillo, for his traverse to the return to the herein order to show cause why a writ of habeas corpus should not issue, respectfully shows and alleges as . . . follows:

I.

Answering paragraph I of said return, denies each, all and every allegation therein contained, generally and specifically, and the whole thereof; and to the contrary alleges that he is illegally imprisoned and restrained of his liberty.

II.

Answering paragraph II of said return, petitioner admits all the matters therein contained, but, by way of defense thereto, alleges: That said order of deportation is based on an entry the nature and character of which is not comprehended within the meaning of the Immigration Act of February 5th, 1917, in consequence whereof, your petitioner alleges that he is illegally restrained of his liberty and unlawfully confined. [47]

III.

Answering paragraph III of said return, petitioner admits all the matters therein contained, Excepting, that your petitioner denies, generally and specifically, so much thereof that reads as follows: "Respondent Further States That Petitioner Was Accorded a Hearing in Conformity With Law to Determine His Right to Remain in the United States."

In respect to so much of respondent's allegations hereinabove quoted, petitioner to the contrary alleges that said hearing did not conform to law, in consequence whereof petitioner alleges that said hearing was grossly unfair to him; and in this connection petitioner incorporates in this, his traverse, by way of reference, paragraph V In Toto, at page 2, of his petition herein on file, and makes the same a part hereof as though fully set forth at this point, and pleads the same as and for his defense, as against so much of said paragraph III of said return denied by said petitioner.

Wherefore, your petitioner requests that he be granted a writ of habeas corpus as prayed for in his said petition on file herein.

JOSE AUDON SALAZAR DELGADILLO
Petitioner

ALBERT LAX
Attorney for Petitioner [48]

[Title of District Court and Cause.]

POINTS AND AUTHORITIES

Point I.

Petitioner desires to re-emphasize that the warrant of deportation herein opposed by said petitioner is based on an entry resulting directly from said petitioner's obedience to an order of the United States War Shipping Administration, a federal agency, issued in the exercise of lawful war powers vested in it under the provisions of the executive order noted below.

AUTHORITY

Executive Order 9054, dated February 7th, 1942, and amendments thereto. (U. S. C. A. Title 50, Section 1295.)

Point II.

For his further points and authorities in support of his traverse to the return to the order to show cause herein on file, petitioner adopts in support thereof his points and authorities heretofore herein filed in support of his petition for a writ of habeas corpus.

Respectfully submitted,

ALBERT LAX

Attorney for Petitioner [49]

[Verified.]

[Endorsed]: Filed Sep. 7, 1945. [50]

[Minutes: Friday, September 21, 1945]

Present: The Honorable J. F. T. O'Connor, District Judge.

Under date of September 9th, 1945, the Court having taken under submission the petition of the petitioner herein for a Writ of Habeas Corpus and having duly considered the matter, it is now by the Court ordered that the said petition for the Writ be, and the same is hereby, granted. [51]

[Title of District Court and Cause.]

RETURN TO WRIT OF HABEAS CORPUS

I, Albert Del Guercio, District Director, Immigration and Naturalization Service, Department of Justice, Los Angeles, California, District No. 16, respondent herein, for my return to writ of habeas corpus issued in the above case, state:

I.

That Jose Audon Salazar Delgadillo, hereinafter referred to as the petitioner, is not being illegally restrained by me of his liberty but is in my custody under proper and lawful authority.

II.

On August 25, 1945 the petitioner was surrendered into my custody for deportation by virtue of an outstanding warrant of deportation issued under the authority vested in the Attorney General directing that the petitioner be taken into custody and deported to Mexico.

III.

That respondent is now, and has been at all times since [55] August 25, 1945, ready and prepared to effect the deportation of the petitioner to Mexico in pursuance of the said warrant of deportation.

IV.

For further return of respondent there is attached hereto as a part of this return and marked Exhibit "A", original Immigration and Naturalization Service, Department of Justice, file number A-1125010 containing a com-

plete record of the deportation proceedings, including, among other papers, original order of the Board of Immigration Appeals and original warrant directing the deportation of the petitioner, Jose Audon Salazar Delgadillo, to Mexico.

Wherefore, I, Albert Del Guercio, District Director, Immigration and Naturalization Service, Department of Justice, pray that the writ of habeas corpus be dismissed and that said petitioner, Jose Audon Salazar Delgadillo, be remanded to my custody.

ALBERT DEL GUERCIO
District Director
Immigration and Naturalization Service
Department of Justice
District No. 16 [56]

[Verified.]

[Endorsed]: Filed Oct. 15, 1945. [57]

[Minutes: Thursday, October 18, 1945]

Present: The Honorable J. F. T. O'Connor, District Judge.

This matter having come before the Court on October 15, 1945, for hearing on Petition for a Writ of Habeas Corpus, and having been argued and submitted and the Court having considered the matter, it is now by the Court ordered that the said Petition is granted and that the Petitioner be discharged from custody. [58]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Albert Del Guercio, District Director, Immigration and Naturalization Service, United States Department of Justice, District No. 16, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from Minute Order dated October 18, 1945, of the District Court of the United States, in and for the Southern District of California, Central Division, granting writ of habeas corpus and discharging the petitioner Jose Audon Salazar Delgadillo from my custody.

Dated: This 26th day of October, 1945.

CHARLES H. CARR
United States Attorney
RONALD WALKER and
ATTILIO DI GIROLAMO
Assistant United States Attorneys
By Attilio di Girolamo
Attorneys for Appellant

[Endorsed]: Filed and mailed copy to Albert Lax, atty. for petnr. Oct. 26, 1945. [59]

In the District Court of the United States in and for the Southern District of California

Central Division

No. 4701 O'C

In the Matter of JOSE AUDON SALAZAR DELGADILLO, an Alien,

Petitioner.

ORDER AND JUDGMENT GRANTING WRIT OF HABEAS CORPUS AND DISCHARGING PETITIONER FROM CUSTODY

This matter having come to be heard upon the Petition for Writ of Habeas Corpus, Order to Show Cause and Return to Order to Show Cause; Jose Audon Salazar Delgadillo, Petitioner, having appeared with his attorney, Albert Lax, and Albert Del Guercio, Respondent, having appeared by Charles H. Carr, United States Attorney, and the Court having heard the Petition and Return thereto and inquired into the facts and evidence having been offered and received and the case having been argued by counsel and the Court having on October 18, 1945, entered a Minute Order granting the Motion of Petitioner for a Writ of Habeas Corpus and discharging the Petitioner from custody. It is therefore:

Ordered, Adjudged and Decreed that Writ of Habeas Corpus issue [60] directed to Albert Del Guercio, Respondent, ordering the immediate release of Jose Audon Salazar Delgadillo, Petitioner.

Dated: Nov. 15th, 1945.

J. F. T. O'CONNOR
Judge United States District Court

Approved as to Form
CHARLES H. CARR
United States Attorney
By Attilio di Girolamo
Assistant U. S. Attorney

Judgment entered Nov. 15, 1945. Docketed Nov. 15, 1945. Book COB 35, Page 598. Edmund L. Smith, Clerk, by Francis E. Cross, Deputy.

[Endorsed]: Filed Nov. 15, 1945. [61]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Albert Del Guercio, District Director, Immigration and Naturalization Service, United States Department of Justice, District No. 16, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from Judgment of the District Court of the United States in and for the Southern District of California, Central Division, dated November 15, 1945, granting Writ of Habeas Corpus and discharging the Petitioner Jose Audon Salazar Delgadillo from my custody.

Dated: This 16th day of November, 1945.

CHARLES H. CARR
United States Attorney
RONALD WALKER and
ATTILIO DI GIROLAMO
Assistant U. S. Attorneys
By: Attilio di Girolamo
Attorneys for Appellant

[Endorsed]: Filed and mld. copy to Albert Lax, Atty. for Petnr. Nov. 16, 1945. [62]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING THE RECORD AND DOCKETING THE APPEALS

It Is Ordered that the time for filing the record and docketing the appeals from Minute Order of October 18, 1945 and Judgment and Order filed November 15, 1945, be and is hereby extended to January 23, 1946.

J. F. T. O'CONNOR
United States District Judge

Dated: November 19, 1945.

[Endorsed]: Filed Nov. 19, 1945. [63]

[Title of District Court and Cause.]

STIPULATION REGARDING ORIGINAL RECORDS AND FILES OF DEPARTMENT OF JUSTICE

It is Hereby Stipulated and Agreed by and between Charles H. Carr, United States Attorney for the Southern District of California, Central Division, Ronald Walker and Attilio di Girolamo, Assistant United States Attorneys for said District, Attorneys for Albert Del Guercio, District Director of Immigration and Naturalization Service of the United States for the Los Angeles District, No. 16, appellant, and Albert Lax, attorney for the appellee herein, that the original files and records of the Department of Justice, covering the deportation proceedings against the said appellee, which were filed in the hearing in the above entitled case, may be by the Clerk of this court sent up to the Clerk of the United States Circuit Court of Appeals, Ninth Circuit, as part of the appellate record in order that said original immigration

files may be considered by the Circuit Court of Appeals by the Ninth Circuit in lieu of certified copy of said records and files and that said original records may be transmitted [64] as part of said appellate record.

Dated:

CHARLES H. CARR
United States Attorney
RONALD WALKER and
ATTILIO DI GIROLAMO
Assistant U. S. Attorneys
By Attilio di Girolamo
Attorneys for Appellant.
ALBERT LAX
By Albert Lax
Attorney for Appellee

ORDER FOR TRANSMISSION OF ORIGINAL EXHIBITS

On Stipulation of Counsel, it is by the Court Ordered that the original records of the Department of Justice, filed herein on the hearing of the return of said appellant Albert Del Guercio, District Director of the United States Immigration and Naturalization Service for the Los Angeles District, No. 16, to the Writ of Habeas Corpus herein, be transmitted by the Clerk of this Court to the United States Circuit Court of Appeals for the Ninth Circuit as original exhibits, in lieu of a certified copy of said records and files and that the same may not be printed.

Dated: Dec. 12, 1945.

J. F. T. O'CONNOR
United States District Judge

[Endorsed]: Filed Dec. 12, 1945. [65]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 67 inclusive contain full, true and correct copies of Petition for Writ of Habeas Corpus; Order to Show Cause in re Writ of Habeas Corpus; Return to Order to Show Cause Why Writ Should Not Issue; Petitioner's Traverse to Return to Order to Show Cause; Minute Order Entered September 21, 1945; Writ of Habeas Corpus; Return to Writ of Habeas Corpus; Minute Order Entered October 18, 1945; Notice of Appeal filed October 26, 1945; Order and Judgment Granting Writ of Habeas Corpus and Discharging Petitioner from Custody; Notice of Appeal filed November 16, 1945; Order Extending Time for Filing the Record and Docketing the Appeals; Stipulation and Order Regarding Original Records and Files of Department of Justice; and Designation of Record on Appeal which, together with Original Files of the Immigration and Naturalization Service of the Department of Justice, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 4 day of January, 1946.

(Seal) EDMUND L. SMITH,
Clerk,
By Theodore Hocke,
Chief Deputy Clerk.

[Endorsed]: No. 11225. United States Circuit Court of Appeals for the Ninth Circuit. Albert Del Guercio, District Director, Immigration and Naturalization Service, United States Department of Justice, District No. 16, Appellant, vs. Jose Audon Salazar Delgadillo, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed January 7, 1946.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11225

In the Matter of the Petition of

JOSE AUDON SALAZAR DELGADILLO
For a Writ of Habeas Corpus

ALBERT DEL GUERCIO, District Director, Immigration and Naturalization Service, United States Department of Justice, District No. 16,

Appellant

vs.

JOSE AUDON SALAZAR DELGADILLO,

Appellee.

APPELLANT'S STATEMENT OF POINTS AND DESIGNATION OF RECORD TO BE PRINTED

Pursuant to Rule 19 of the Rules of the above entitled Court the Appellant herein states that the points on which he intends to rely on this appeal are as follows:

(1) The United States District Court for the Southern District of California, Central Division, having not found that the Immigration hearing of the said Jose Audon Salazar Delgadillo was unfair or that an error of law was committed, erred in substituting its Judgment in determining the deportability of the said Petitioner.

(2) The Court erred in determining that a return to the United States by the Petitioner from a foreign country where he stopped while in transit on an ocean voyage

between two (2) points in the United States did not constitute an entry within the meaning of Section 19 of the Immigration Act of February 5, 1917.

(3) The Court erred in granting the writ of habeas corpus.

(4) The Court erred in discharging the said Jose Audon Salazar Delgadillo from the custody of the Appellant.

And the Appellant hereby designates the entire certified record as necessary for the consideration of the foregoing points and also Statement of Points and designation of record to be printed under Rule 19 (6); stipulation of counsel and application for order transmitting original records and Order for consideration of original records.

Appellant desires that the original records and files of the Department of Justice contained in Appellant's return to the writ of habeas corpus be not printed but considered by the Court in this appeal in their original form.

CHARLES H. CARR
United States Attorney
JAMES M. CARTER
RONALD WALKER
A. Di GIROLAMO
Assistant U. S. Attorneys
By Attilio di Girolamo
Attorneys for Appellant

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jan. 7, 1946. Paul P. O'Brien, Clerk.

[Title of Circuit Court and Cause.]

APPLICATION AND ORDER FOR TRANSMITTAL OF EXHIBITS

STIPULATION

It is hereby stipulated by and between the counsel for the appellee and counsel for the appellant that an order may be made by the Circuit Court of Appeals directing that the original files and records of the Department of Justice, in the hearing covering the deportation proceedings against the appellee be transmitted with and be deemed part of the record on appeal of the appellant herein without the necessity of printing them in the record.

Dated: This 20 day of December, 1945.

CHARLES H. CARR
United States Attorney

JAMES M. CARTER

RONALD WALKER

ATTILIO DI GIROLAMO
Assistant U. S. Attorneys

By Attilio di Girolamo
Attorneys for Appellant

ALBERT LAX
Attorney for Appellee

[Title of Circuit Court and Cause.]

AFFIDAVIT REGARDING APPLICATION FOR ORDER TRANSMITTING ORIGINAL FILES AND RECORDS.

Attilio Di Girolamo, being first duly sworn deposes and says:

That it has been heretofore agreed by counsel for the appellant and counsel for the appellee that so as to save costs in printing the record and for the purpose of brevity that subject to the approval of this honorable Court, there need not be included and printed into the record, the original files and records of the Department of Justice, covering the deportation proceedings against the appellee with a further understanding and agreement that said original files and records may be considered as part of the record in their original form and transmitting in their physical form to the Circuit Court for consideration in connection with this appeal.

It is your affiant's firm belief and opinion that said original files and records would be material in connection with the appeal herein; but that to include said files and records would cost undue expense in the preparation of printing the record, making the same cumbersome and difficult for convenient use.

Wherefore, affiant prays that an order may be made that the original files and records of the Department of Justice filed at the hearing of this action be deemed part of the record and transmitted to the Circuit Court of

Appeals and that a further order be made that said original files and records need not be printed.

ATTILIO DI GIROLAMO
Assistant U. S. Attorney
Attorney for Appellant

Subscribed and sworn to before me this 26th day of December, 1945.

(Seal) George M. Bryant
Notary Public in and for the County of Los Angeles, State of California

[Title of Circuit Court and Cause.]

ORDER FOR TRANSMITTAL OF EXHIBITS

Upon the application of the appellant and the stipulation of the parties and good cause appearing therefor:

It is ordered and directed that the original files and records of the Department of Justice which were filed in connection with the proceeding of this action will be deemed part of the record and transmitted to this Court upon the hearing of the appeal.

It is further ordered that said files and records need not be printed, but will be considered in their original form.

FRANCIS A. GARRECHT
Judge of the United States Circuit Court of Appeals

Dated: This 7th day of January, 1946.

[Endorsed]: Filed Jan. 7, 1946. Paul P. O'Brien, Clerk.

No. 11225

IN THE

United States Circuit Court of Appeals
For the Ninth Circuit

ALBERT DEL GUERCIO, District Director, Immigration and Naturalization Service, United States Department of Justice, District No. 16,

Appellant,

vs.

JOSE AUDON SALAZAR DELGADILLO,

Appellee.

Upon Appeals from the District Court of the United States for the Southern District of California, Central Division

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PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

United States Circuit Court of Appeals
For the Ninth Circuit

Excerpt from Proceedings of Wednesday, November 13, 1946.

Before: Mathews and Orr,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. Clark Stephens, Assistant United States Attorney, counsel for appellant, and by Mr. Albert Lax, counsel for appellee, and submitted on the oral stipulation of said counsel to Mathews and Orr, Circuit Judges, and such other Circuit Judge as the Senior Circuit Judge of this Court shall designate to participate herein.

United States Circuit Court of Appeals
For the Ninth Circuit

Excerpt from Proceedings of Wednesday, January 22, 1947.

Before: Garrecht, Mathews and Orr,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk and that a decree be filed and recorded in the minutes of this court in accordance with the opinion rendered.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 11,225

Jan. 22, 1947

ALBERT DEL GUERCIO, District Director, Immigration and Naturalization Service, United States Department of Justice, No. 16,
Appellant,

vs.

JOSE AUDON SALAZAR DELGADILLO,
Appellee.

Upon appeals from the District Court of the United States for the Southern District of California, Central Division.

Before: Garrecht, Mathews and Orr, Circuit Judges.

Orr, Circuit Judge.

OPINION

Appellee, being in the custody of appellant for the purpose of being deported to Mexico, the country of his birth, petitioned the trial court for a writ of habeas corpus. The writ was granted and after hearing appellee was ordered discharged. From the order of discharge, appellant, to whom we shall hereafter refer as the Immigration Director, appeals.

It appears that appellee, a citizen of Mexico, was admitted to the United States for permanent residence in 1923. He continued to reside here until June 1942. During that month he shipped as a member of the crew of the American ship "Andrew Jackson," then under the operational control of the United States Government, through the War Shipping Administration.

On July 12, 1942, the "Andrew Jackson" was torpedoed off the coast of Cuba. Appellee was rescued and taken to Cuba, where he remained one week. He was then flown to Miami, Florida, and admitted to the United States in transit by immigration officers for a period of not more than 30 days for the purpose of reshipping foreign from San Pedro, California.

On March 27, 1944, in the Superior Court of Los Angeles County, California, appellee was convicted of second degree robbery. He was thereafter sentenced to imprisonment from one year to life.

On June 23, 1944, a warrant for the arrest of appellee was issued charging him with being in the United States in violation of the Immigration Act of February 5, 1917.[1] Such violation consisted of

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[1]Sec. 19(a) of the Immigration Act of February 5, 1917, 39 Stat. 889, (8 U.S.C.A. §155(a)):

"* * * any alien who is hereafter sentenced to imprisonment for a term of one year or more because of a conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States * * * shall, upon the warrant of the Attorney

being sentenced to imprisonment for one year or more upon conviction of a crime involving moral turpitude, said crime being committed within five years after entry into the United States.

Hearings on the deportation proceedings for the purpose of permitting appellee to show cause why he should not be deported were held at San Quentin Penitentiary where appellee was confined under the sentence imposed pursuant to the felony conviction of March 27, 1944. Said hearings were conducted by the Presiding Inspector of the Immigration Service. He found appellee's return to the United States at Miami in July, 1942, constituted an "entry" within §19 (a), supra, and recommended that appellee be deported. The Board of Immigration Appeals adopted this recommendation and twice denied appellee's motions to reopen the administrative hearing.

Appellee was surrendered into the custody of the Immigration Director on August 25, 1945.

The question for determination is: Was the arrival of appellee at Miami, Florida, in July, 1942, after landing in Cuba, an "entry" within §19 (a) of the Immigration Act, supra? We find that it was. The Supreme Court of the United States, in the case of U.S. ex rel. Volpe v. Smith, 289 U.S. 422, held that the word entry as used in §19 (a) of

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General, be taken into custody and deported. * * * In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Attorney General shall be final."

the statute "includes any coming of an alien from a foreign country into the United States whether such coming be the first or any subsequent one." (289 U. S. 422, 425).

In an earlier case involving the same statute, the Supreme Court said:

"The word 'entry' by its own force implies a coming from outside. The context shows that in order that there be an entry within the meaning of the Act there must be an arrival from some foreign port or place." U.S. ex rel. Clausen v. Day, 279 U.S. 398, 401.[2]

Whether or not the alien intended to land on the foreign soil or intended to return to the United States is immaterial in considering whether his return to this country constitutes an "entry" within the Immigration Act. In Taguchi v. Carr, 62 F. 2d, 307, CCA 9, we held that a fisherman-alien, shipwrecked and ordered by his captain to land on an island of Mexico, upon subsequently returning to the United States made an entry within §19 (a), supra. And in Blumen v. Haff, 78 F. 2d, 833, CCA 9, cert. den. 296 U. S. 644, we held that aliens brought to this country by extradition from England had "entered" within the meaning of that section.

Appellee argues these cases are distinguishable because the aliens involved were not hazarding their

[2]See also, U.S. ex rel. Stapf v. Corsi, 287 U.S. 129, 132.

lives in time of war on vessels under the control of the United States. We cannot agree that such a situation has any controlling effect.

If "any coming of an alien from a foreign country into the United States" is an "entry" (U.S. ex rel. Volpe v. Smith, 289 U. S. 422, 425) the circumstance that appellee was brought to the United States under the general supervision of the Government after landing on Cuban soil as a result of his war time service cannot alter the fact that his return to Miami in July 1942 is within the definition of an "entry" as laid down by the Supreme Court. Appellee argues that it is difficult to reconcile one's conscience to the proposition that the Government will order a seaman into submarine infested waters knowing landings on foreign soil may be required and then brand the seaman's return as an "entry". This argument does not take into account the fact that so far as §19 (a) is concerned no criminal or prejudicial stigma attaches in holding an arrival in the United States from foreign soil an "entry". It is the commission of a crime by an alien involving moral turpitude within five years from the time of such entry and for which he is sentenced to imprisonment for a year or more which carries the deportation penalty. The Government is not asking that appellee be deported because the exigencies of war forced him to land in Cuba. Appellee is being deported because, within five years after his entry, he was convicted of robbery.

Appellee also urges that his administrative hear-

ing was unfair because the Department of Justice denied him a reasonable time to arrange for his defense; and that the Department of Justice further erred in compelling him to submit to a deportation hearing before being taken into custody.

Appellee relies on §150.6 of Title 8, Code of Federal Regulations, subsection (a) of which reads:

"150.6 Hearing: (a) when to be accorded under warrant. After the alien has been taken into custody under a warrant of arrest and has been given a reasonable time to arrange for his defense, including, if desired, representation by counsel * * * the alien shall be granted a hearing to determine whether he is subject to deportation on the charges stated in the warrant of arrest. * * *"

The Immigration Director served his warrant of arrest on appellee on July 8, 1944, while the latter was confined in San Quentin Penitentiary. On that date appellee was informed of his right to representation by counsel and his right to have a reasonable time to prepare his defense in the proceedings to show cause. Appellee signified he understood his rights and that he did not wish to be represented by counsel. After the July 10th hearing was concluded there was a continuance to August 21, 1944, before a final hearing was had.

Appellee contends that because he was in San Quentin when the hearings were held he had not "been taken into custody" within §150.6 (a), supra. The contention is answered by the requirements of

§150.5 (b)[3] of the same regulations, which forbid removal of an alien confined in an institution until the warrant of deportation has been served and the Immigration Service is "completely ready to deport."

We think appellant had a "reasonable time" to arrange for his defense, including, if desired, representation by counsel. He was fully informed of his rights and of the single charge against him, i.e., deportation because of conviction of a felony within five years after entry into the United States. No longer period was requested by appellant to arrange for his defense and he indicated he did not wish the aid of counsel.

The record discloses that at the beginning of the hearing on June 10, 1944, appellee answered "Yes" to the question of whether he was "now ready and willing to proceed with this hearing."

No illegality appearing in the detention of appellee by the Immigration Director, the judgment granting the writ of habeas corpus ordering the release of appellee from custody is reversed.

Judgment reversed.

[Endorsed]: Opinion. Filed Jan. 22, 1947. Paul P. O'Brien, Clerk.

---

[3]By an amendment to the regulations effective July 31, 1944, this section became sub-section (e), 9 F.R. 9346.

United States Circuit Court of Appeals
For the Ninth Circuit

No. 11225

ALBERT DEL GUERCIO, etc.,
Appellant,

vs.

JOSE AUDON SALAZAR DELGADILLO,
Appellee.

DECREE

Appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted.

On Consideration Whereof, it is now here ordered, adjudged and decreed by this Court, that the Order and Judgment of the said District Court in this cause be, and hereby is, reversed.

[Endorsed]: Filed and entered January 22, 1947.

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing eighty-three (83) pages, numbered from and including 1 to and including 83, to be a full, true and correct copy of the entire record together with original immigration files transmitted herewith of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellee, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 12th day of February, 1947.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 2, 1947

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1451)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 1244

JOSE AUDON SALAZAR DELGADILLO,

Petitioner,

vs.

ALBERT DEL GUERCIO, District Director, Immigration and Naturalization Service, United States Department of Justice, District No. 16,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. .....

JOSE AUDON SALAZAR DELGADILLO,

Petitioner,

vs.

ALBERT DEL GUERCIO, District Director, Immigration and Naturalization Service, United States Department of Justice, District No. 16,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered on January 22, 1947 [R. 83], reversing a judgment of the United States District Court for the Southern District of California.

Jurisdiction.

The judgment of the United States Circuit Court for the Ninth Circuit was entered January 22, 1947 [R. 83]. The issue as to which petitioner seeks this Court's review

involves construction of section 19(a) of the Immigration Act of February 5, 1917, 39 Stat. 889 (United States Code, Title 8, sec. 155(a)); this issue was decided favorably to petitioner in the trial court [R. 59] but adversely to petitioner, over his objection, in the Circuit Court [R. 82]. The jurisdiction of this Court is invoked under section 240(a) of the Judicial Code, as amended.

Question Presented.

Whether petitioner is deportable under section 19(a) of the Immigration Act of February 5, 1917, on the basis that his arrival in a United States port was an "entry" within the meaning of that section, although such arrival and the departure prior thereto were wholly contrary to petitioner's volition and intention and occurred solely because the vessel on which he was a seaman was torpedoed by the enemy.

Statute Involved.

The relevant provision of section 19(a) of the Immigration Act of February 5, 1917, 39 Stat. 889, 8 U. S. C. A. 155(a),[1] is as follows:

> "* * * any alien who is hereafter sentenced to imprisonment for a term of one year or more because of a conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States * * * shall, upon the warrant of the Attorney General, be taken into custody and deported. * * *"

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[1]Hereinafter referred to as section 19(a).

Statement of the Case.

The petitioner herein filed a petition for a writ of habeas corpus in the District Court, praying therein for his release from the custody of the immigration authorities by whom he was held under a warrant of deportation purportedly issued under section 19(a).

Facts.—The uncontroverted facts, as shown by the petition and return, are that petitioner, a Mexican citizen, entered the United States when an infant accompanied by his parents in 1921 [R. 15], and resided here continuously until 1942 when he signed on as a crew member of the SS. Andrew Jackson [R. 15]. This vessel was of American registry and was then under the jurisdiction of the War Shipping Administration, which had war-time control of all United States ocean-going vessels [R. 7]. Petitioner signed on for a voyage which was specifically limited in the articles to "intercoastal," and the SS. Andrew Jackson, with petitioner aboard, departed from California for an intercoastal voyage to New York City [R. 6]. While at sea the SS. Andrew Jackson was torpedoed; after two days in a lifeboat petitioner was rescued and taken with other survivors to Havana, Cuba [R. 15]. He remained there in the care of the American Consul for one week; the War Shipping Administration then brought him by plane to Miami, Florida [R. 15]. He arrived there on July 19, 1942, and was allowed to land along with other survivors of torpedoed vessels despite their failure to possess passports or visas [R. 15].

Rulings by Immigration Authorities.—On these facts the immigration authorities found, over petitioner's argument to the contrary, that petitioner made an "entry" into the United States within the meaning of section 19(a)

when he arrived at Miami, Florida, on July 19, 1942 [R. 54].

The immigration authorities further found, and it was conceded by the petitioner, that he was convicted of robbery, a crime involving moral turpitude, committed on or about January 22, 1944, and sentenced therefor to imprisonment for a term of one year to life [R. 54].

On the basis of their finding that petitioner made an "entry" into the United States in 1942, the immigration authorities held that petitioner was deportable under section 19(a) because of the commission of the above-mentioned crime within five years after "entry" [R. 54].

Decisions Below.—The District Court ruled, without opinion, that a writ of habeas corpus directed to the immigration authorities should issue, and that they should release petitioner.

The Circuit Court reversed this judgment, ruling adversely to petitioner's contentions that his hearing before the immigration authorities was unfair and irregular, and that he had not made an "entry" into the United States within the meaning of section 19(a) when he arrived in Miami in 1942. In holding that he had on that occasion made an "entry," the Circuit Court relied in large part on this Court's statement in *United States ex rel. Volpe v. Smith*, 289 U. S. 422, 425, that an "entry" within the meaning of section 19(a) "includes any coming from a foreign country into the United States whether such coming be the first or any subsequent one" [R. 79].[2] As to

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[2]The Circuit Court also referred to *United States ex rel. Claussen v. Day*, 279 U. S. 398, and *United States ex rel. Stapf v. Corsi*, 287 U. S. 129 [R. 79], but these decisions go no further than, if as far, the *Volpe* case in support of the Circuit Court's decision.

the fact that petitioner's departure from, and arrival in, the United States in 1942 had not been intentional, the Circuit Court referred to its own decisions as the basis for holding that such lack of intention was immaterial to the question of entry [R. 79].[3]

Reasons for Granting the Writ.

1. The correct construction of section 19(a) is of great importance in the proper administration of the Immigration Act. In particular, the question of the materiality to the establishment of an "entry," within the meaning of this section, of the alien's intention to cross the borders of the United States is of vital concern to the security of the more than three million aliens in this country. While this Court has granted petitions for certiorari in order to review other phases of the construction of the term "entry,"[4] it has not considered this important question.

The Circuit Court's construction of the term "entry" is incorrect and should not be allowed to stand. It is un-

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[3]The Circuit Court's determination that an "entry" was made in 1942 rests wholly on the basis of the torpedoing and petitioner's consequent enforced stay in Cuba. It has at all times been conceded that if his intercoastal voyage had continued uninterrupted, he would not be considered to have departed from the United States or made a new "entry" when he landed at its termination. This point is established by *United States ex rel. Claussen v. Day*, 279 U. S. 398.

[4]See *Lapina v. Williams*, 232 U. S. 78; *Lewis v. Frick*, 233 U. S. 291; *Kaplan v. Tod*, 267 U. S. 228; *United States ex rel. Claussen v. Day*, 279 U. S. 398; *United States ex rel. Slapf v. Corsi*, 287 U. S. 129; *United States ex rel. Volpe v. Smith*, 289 U. S. 422.

reasonable in that it makes the fundamental right of continued residence in this country dependent upon fortuitous events and caprice. Furthermore, the decisions of this Court on which the Circuit Court relies do not support it. None of those decisions indicates that a departure and arrival, which are involuntary and unintentional and in fact are wholly contrary to volition and intention, constitute entry. And on the contrary, *Kaplan v. Tod*, 267 U. S. 228, which is not considered by the Circuit Court, shows that mere physical passage across the borders of the United States is not the only fact to be considered in determining whether "entry" has been made.

2. The Ninth Circuit Court's decision is in direct conflict with the recent decision of the Circuit Court of Appeals for the Second Circuit in the case of *J. DiPasquale v. Karnuth*, 158 F. (2d) 878. In that case the Court held, in an opinion by L. Hand, Chief Justice, that "the mere physical passage of an alien across the boundaries of the United States, regardless of any intent" does not constitute an "entry" within the meaning of section 19(a); and that the alien did not make "entry" by arriving in the United States after a departure to foreign soil when such arrival and departure were unintentional, because "the factor of intent" was not satisfied by the alien's mere acquiescence in his carriage out of and back into the United States.

The Ninth Circuit's construction of the term "entry" in the instant case is directly contradictory to the Second Circuit's construction. The Ninth Circuit states cate-

gorically that "whether or not the alien intended to land on the foreign soil or intended to return to the United States is immaterial in considering whether his return to this country constitutes an 'entry' within the Immigration Act" [R. 79]. The *DiPasquale* and the instant decisions are not only in conflict, but a contrary holding in the *DiPasquale* case is an *a fortiori* proposition from the construction adopted by the Ninth Circuit. For in the *DiPasquale* case it would at least have been possible for the alien to have possessed the intention to leave this country since he could have ascertained that the route of the carrier would have carried him out of and back into this country, while the petitioner herein could not have ascertained, even if he had attempted to do so, that he would be forced to pass across the borders of the United States.[5]

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[5]There appears to be no rational or substantial ground on which the *DiPasquale* holding and the holding in the instant case can be distinguished. The only possible distinction on the facts must at best be denominated a quibble. This distinction is that in the *DiPasquale* case the alien did not know he was departing from the United States at the moment he did so because he was then asleep, though he could have ascertained beforehand that he was to so depart; while in the instant case the alien was aware of such departure at the time thereof (that is, when he was rescued from the torpedoed vessel) though he could have ascertained beforehand only that it was possible he would so depart. The contradictory holdings did not, and can not rationally, however, be tied to such a distinction. In both cases the Court considered the actual state of mind of the alien; in both cases the actual mental state was identical in that the alien did not know that he would, and did not intend to, depart from the United States, and in both, it may be added, the alien was powerless to prevent his departure at the moment it occurred. In one case this state of mind was held to preclude an "entry," and in the other it was held not to do so.

ARGUMENT

IN SUPPORT OF CONTENTION THAT THE CIRCUIT COURT'S DECISION IS ERRONEOUS.

The Circuit Court's Construction of the Term "Entry" in Section 19(a) Is Unreasonable and Is Not Supported by the Decisions of This Court.

There is nothing in the legislative history of the Immigration Act indicative of the meaning of the term "entry" in so far as materiality of intent is concerned. And though the connotation of deliberation which the term bears lends support to the Second Circuit's construction, consideration of the word's ordinary usage and implications cannot be relied upon as persuasive of the correctness of either the Second or the Ninth Circuit's construction. Accordingly, resort must be had to the reasonableness of the term's possible constructions in order to determine the congressional intent.

The unreasonableness of the construction of section 19(a) which the Ninth Circuit adopted in the instant decision seems to us well-expressed in the opinion of L. Hand, Chief Justice, in the *DiPasquale* case. In that case the alien only intended to travel from one point to another within the United States, and did not have knowledge of the fact that the railroad on which he embarked was to carry him out of and back into this country. In holding that the alien did not make an "entry" when he returned to this country, the Court said:

> "If the word, 'entry,' in the statute extends to the mere physical passage of an alien across the boundaries of the United States, regardless of any intent, the order [of deportation under section 19(a)] was

right; but, if so, an alien who is arrested or abducted, and carried against his will out of the country and then back again into it, makes an 'entry.' * * * On the other hand, if the necessary intent demands knowledge by the alien that the route which he is to take will carry him across our borders, then DiPasquale did not enter when, asleep, he came into Detroit.

"* * * Were it otherwise, the alien would be subjected without means of protecting himself to the forfeiture of privileges which may be, and often are, of the most grave importance to him. He would be charged with the duty, every time he set foot upon a public conveyance to inform himself of its projected journey. Even if aliens were adequately advised of the danger, this would be a serious, and quite useless, burden to impose upon them, but there is nothing to advise them, and the duty would in practice become a trap, whose closing upon them would have no rational relation to anything they could foresee as significant. We cannot believe that Congress meant to subject those who had acquired a residence, to the sport of chance, when the interests at stake may be so momentous.

"* * * concededly he (the alien) was not subject to deportation except for his journey between Buffalo and Detroit; he had a vested interest in his residence, which could not be impaired so long as he avoided another conviction. That interest is now to be forfeited because of perfectly lawful conduct which he could not possibly have supposed would result in anything of the sort. Caprice in the incidence of punishment is one of the indicia of tyranny, and nothing can be more disingenuous than to say that deportation in these circumstances is not punishment. It is well that we should be free to rid ourselves of those who

abuse our hospitality: but it is more important that the continued enjoyment of that hospitality once granted, shall not be subject to meaningless and irrational hazards."

The reasonableness of the Second Circuit's construction is fully as apparent upon the facts of the instant case as upon those of the *DiPasquale* case. For not only was petitioner forced to cross the borders of the United States against his will and intention, but he was so forced because of his performance of war service which this Government urgently needed. Surely his punishment for the fortuitous consequence of such service would be capricious.

As against Justice Hand's persuasive reasoning in support of the Second Circuit's construction, the Ninth Circuit in the instant opinion has pointed to no ground in support of its construction of the term "entry" but rests it on its previous decision in *Taguchi v. Carr*, 62 F. (2d) 307. In that decision, however, the Ninth Circuit had ruled that intention was immaterial solely on the basis that it was "compelled" to its conclusion, which it recognized as "unfortunate," by the decisions of this Court. But this Court has not held or intimated that an entry includes an involuntary departure and arrival. In all of the cases in which this Court has held that an "entry" includes an arrival subsequent to the original one—the *Lapina, Lewis, Claussen, Stapf* and *Volpe* cases (all cited *supra*, note 4)—the aliens departed from the United States and returned to it with complete foreknowledge and

intention as to their destinations. As Justice Hand pointed ont in the *DiPasquale* case, the only one of these decisions having any bearing on the question of the materiality of intention is *Claussen v. Day*, and that decision "so far as it counts at all, counts in DiPasquale's favor." The only other relevant decision appears to be *Kaplan v. Tod*, 267 U. S. 228. There this Court's holding that an alien had not effected an "entry" merely by virtue of her physical passage into the United States demonstrates that factors other than such passage may be relevant.[6]

It is to be noted that this Court has not considered, in any of its opinions on re-entry the harsh effect, to which Justice Hand adverts, of its rulings therein that an "entry" may include an arrival subsequent to the original one. The opinion from which all these rulings stem only considered its rationale in relation to exclusion and stated merely that "none of these excluded classes * * * would be any less undesirable if previously domiciled in the United States" (*Lapina v. Williams*, 232 U. S. 78, 92). For the purposes of a reversal of the Circuit Court in the instant case, it is not necessary to contend for, and we are not contending for, a re-examination of this Court's rulings that an "entry" may include an arrival subsequent to the original one; but we advert to the harshness of this ruling for the reason that mindfulness of this point underscores the unreasonableness of the further extension of

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[6]In that case the alien had been ordered excluded, but had been allowed to land due to the exigencies of war, and had resided in the United States for over ten years. She was nevertheless held not to have "entered" within the meaning of the Immigration Act,

the rule evolved by the Ninth Circuit. For even when the alien intentionally departs and returns, as he did in the cases heretofore before this Court, the rule that his return is an "entry" inflicts a hardship which it may be doubted that Congress intended.[7] The provision as to deportation for a crime committed within five years of entry is in effect a provision for a probationary period within this country. It seems dubious that such a probationary period should recommence with every departure and arrival, even though intentional, despite the alien's prior service of the period. And the view that a period of residence in this country does not affect the desirability of deportation is highly questionable, if any heed is to be paid to the processes of assimilation and the effect of residence, which appear to be postulates of the immigration law.

If the rule as to subsequent arrivals is extended so as to apply to the case of an unintended departure and arrival, as the Ninth Circuit has done, it would seem to lose all basis in reason.

The Ninth Circuit has taken the most extreme position possible as to lack of intention in the instant decision, for the alien not only did not intend to depart from this country but could not have so intended because he could not have ascertained that he would be forced to so depart. Thus, the instant case is similar to the hypothetical one

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[7]Though Congress re-enacted section 19(a) subsequent to this Court's decisions that an arrival subsequent to the original one may constitute "entry," this is not conclusive as to the section's proper construction. See *Girouard v. United States*, 328 U. S. 61.

posed by Justice Hand when he says in the *DiPasquale* case:

> "We do not understand that the Director of Immigration takes this extreme position * * * (that) an alien who is arrested or abducted, and carried against his will out of the country and then back again into it, makes an entry."

The petitioner herein was as much caused to depart from the United States by force as if he had been arrested or abducted. In fact, the position of the immigration authorities in the instant case is even more extreme and unfair to the alien than in the case posited by Justice Hand, for the force exerted against petitioner was that of enemy action to which he was exposed because of war service for this Government.

Finally, we respectfully submit that the Ninth Circuit's statement that petitioner is being deported because of his commission of a crime and not "because the exigencies of war forced him to land in Cuba" is an evasion of the issue; it is clear that but for the petitioner's being forced onto foreign soil by the exigencies of war he would not have been held deportable under section 19(a).

It is to be observed that immigration and other governmental authorities were well aware of the exigencies of war, and did not view petitioner as making an "entry," when he was permitted to land in Florida after the torpedoing of his ship. The exigencies of war, and their unavoidable and unintended effect, should not now render him deportable.

Conclusion.

Wherefore, it is respectfully requested that the Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit be granted.

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No. 1044 63

In the Supreme Court of the United States

OCTOBER TERM, 1946

JOSE AUDON SALAZAR DELGADILLO, PETITIONER

v.

ALBERT DEL GUERCIO, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE, DISTRICT No. 16

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

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No. 1244

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BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals (R. 76–82) is reported at 159 F. 2d 130.

JURISDICTION

The judgment of the circuit court of appeals was entered January 22, 1947 (R. 83). The petition for a writ of certiorari was filed April 14, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Petitioner, an alien, shipped on an American merchant vessel bound from Los Angeles, California, to New York via the Panama Canal. He took shore leave at Panama City, Panama. Subsequently the ship was torpedoed, and in consequence petitioner was landed in Cuba and was thereafter brought back to the United States through Miami, Florida. The question presented is whether petitioner's arrival at Miami constituted an "entry" into the United States within the meaning of Section 19 (a) of the Immigration Act of 1917.

STATUTE INVOLVED

The Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, as amended by the Act of June 28, 1940, Sec. 20, 54 Stat. 671, provides in pertinent part:

> SEC. 1. [8 U. S. C. 173] * * * the term "United States" as used in the title as well as in the various sections of this Act shall be construed to mean the United States, and any waters, territory, or other place subject to the jurisdiction thereof, except the Isthmian Canal Zone; but if any alien shall leave the Canal Zone or any insular possession of the United States and attempt to enter any other place under the jurisdiction of the United States, nothing contained in this Act shall be construed as permitting him to enter under any other conditions than those applicable to all aliens.
>
> * * * * * *

SEC. 19 (a) [8 U. S. C. 155 (a)] * * * any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States * * * shall, upon the warrant of the Attorney General, be taken into custody and deported. * * *

STATEMENT

Petitioner, a Mexican citizen, entered the United States in 1922 as an infant in the company of his parents, and resided here continuously until 1942, when he signed on as a member of the crew of the S. S. *Andrew Jackson,* an American merchant ship (R. 15, 23–27, 36). On or about June 13, 1942, the S. S. *Andrew Jackson,* with petitioner aboard, departed from Los Angeles, California, for an intercoastal voyage to New York City. The ship's articles, which petitioner signed, called for an intercoastal voyage. (R. 6, 8a.) En route, before the ship passed through the Panama Canal, it anchored off Panama City, Panama, and petitioner took shore leave in Panama City.[1] After the ship left the Panama Canal on its way to New York, it was torpedoed,

[1] The following testimony was given by petitioner at the deportation hearing (R. 37):

"Q. Did your boat stop at Panama City dock long or didn't you dock there?

"A. Well we anchored outside. We got shore leave at Panama City."

and petitioner, with other survivors, was rescued and taken to Havana, Cuba. About one week later, on July 19, 1942, he was returned to the United States through Miami, Florida. (R. 15, 26, 37.) He was admitted there, in transit, for a period less than 30 days to reship foreign from San Pedro, California (R. 15, 17, 35). On March 27, 1944, petitioner was convicted of robbery in California and sentenced to imprisonment for a term of one year to life (R. 16, 28, 45–48).

While petitioner was confined in the California state prison, proceedings were commenced for his deportation under Section 19 (a) of the Immigration Act of February 5, 1917 (*supra*, pp. 2–3), by reason of his conviction and sentence (in 1944) within five years of his last entry (in 1942) into the United States. At the conclusion of the hearings (R. 19–40), the presiding inspector submitted his report, including a discussion of the evidence and proposed findings of fact and conclusions of law, recommending deportation to Mexico (R. 14–18). The Board of Immigration Appeals thereafter ordered petitioner's deportation (R. 53), and a deportation warrant issued (R. 13–14). On July 6, 1945, petitioner's motion to reopen the deportation proceedings was denied by the Board of Immigration Appeals (R. 54).[2]

On August 27, 1945, petitioner filed a petition

[2] In the courts below, petitioner challenged the fairness of the administrative hearings, but this contention is not renewed here. The propriety of the hearings is treated in the opinion of the court below (see R. 80–82).

for a writ of habeas corpus in the District Court for the Southern District of California, challenging the validity of the deportation order (R. 2–8). In response to an order to show cause (R. 10), respondent filed a return (R. 11–12), to which he attached, *inter alia*, the order and warrant for petitioner's deportation and a copy of the transcript of the hearings before the presiding inspector. The writ issued (R. 57), respondent filed a return to the writ (R. 58–59), a hearing was held, and thereafter the district court entered an order granting the petition and discharging petitioner from custody (R. 59). On appeal to the Circuit Court of Appeals for the Ninth Circuit, the order of the district court was reversed (R. 83).

ARGUMENT

Petitioner contends that his involuntary and fortuitous landing in Cuba cannot be construed as a departure from the United States so as to render his subsequent landing at Miami a new "entry" within the meaning of Section 19 (a) of the Immigration Act of 1917;[2] and that the decision below rejecting this contention is in conflict with the recent decision of the Circuit Court of Appeals for the Second Circuit in *Di Pasquale*

[2] It is clearly established, as petitioner concedes (Pet. 10–11), that an entry within the meaning of Section 19 (a) of the Immigration Act of 1917 includes an arrival subsequent to the original one. See, e. g., *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, 425.

v. *Karnuth*, 158 F. 2d 878, where it was held that an unwitting passage of an alien through Canada, as a sleeping car passenger on a train from Buffalo, New York, to Detroit, Michigan, did not involve an entry into the United States.[4] We agree with the court below that petitioner's landing in Cuba and his subsequent arrival in Miami did constitute an entry for the purposes of Section 19 (a); and we think that the decision of the Second Circuit in the *Di Pasquale* case is not to the contrary.

The opinions in the *Di Pasquale* case and the present case do involve an element of conflict in principle, for the court below said that it is "immaterial," in considering whether an alien's return to this country constitutes an entry, "Whether or not the alien intended to land on the foreign soil or intended to return to the United States" (R. 79), whereas the Second Circuit said that there must be "knowledge by the alien that the route which he is to take will carry him across our borders" (158 F. 2d at 879). On the facts, however, there is no conflict between these two decisions. Di Pasquale's passage through Canada was completely unwitting on his part and the Second Circuit said that it would be unreasonable

[4] The *Di Pasquale* case was decided January 11, 1947; the case at bar on January 22. The court below apparently was not aware of the *Di Pasquale* decision, for it did not refer to it in its opinion.

to impose the burden upon an alien every time he set foot upon a public conveyance to inform himself of its projected journey. That is not the situation here. When, as in this case, an alien embarks on a ship which he knows is scheduled for a voyage from one coast of the United States to another, he can certainly reasonably foresee the possibility that due to change in orders, weather conditions, or other causes, the ship's course may be altered to bring it into a foreign port or place. Consequently, when, due to war conditions, the crew of the S. S. *Andrew Jackson* was forced to land at Cuba, it could not be said that the landing was completely unforeseeable or unwitting as was Di Pasquale's passage through Canada. Indeed, the Second Circuit's opinion in the *Di Pasquale* case recognizes the correctness of the conclusion later reached by the court below in the instant case. In distinguishing the Ninth Circuit's earlier decision in *Taguchi* v. *Carr*, 62 F. 2d 307, the case of the shipwrecked fisherman-alien who, after landing on an island of Mexico on instructions from his captain, was denied readmission and ordered deported upon his subsequent return to the United States, the Second Circuit said that although "it was a hard constraint that put him to the choice" of landing upon foreign soil, he nevertheless "did choose to re-enter and knew he was entering when he did"

(158 F. 2d at 879).[5] The *Taguchi* decision, which the Second Circuit thus approved, and which the court below also cited in support of its decision here (R. 79), is indistinguishable from the instant case. The decision below that on the basis alone of petitioner's involuntary and fortuitous landing in Cuba, his subsequent return to the United States constituted an entry within the meaning of Section 19 (a) is therefore not only consistent with, but is supported by the Second Circuit's opinion in the *Di Pasquale* case, as well as by the decisions of this Court discussed below.

But it is unnecessary to predicate the conclusion that petitioner made an entry into the United States in 1942 on the fact of the landing in Cuba. As shown in the Statement, *supra*, p. 3, the S. S. *Andrew Jackson* anchored outside of Panama City, Panama, during the course of its voyage to New York, and petitioner was granted shore leave at Panama City. His act in thus landing on foreign soil was plainly voluntary and intentional, and his subsequent arrival at Miami was likewise a voluntary and intentional coming to the United

[5] The Second Circuit considered that its *Di Pasquale* decision conflicted only with the First Circuit's decision in *Ward* v. *De Barros*, 75 F. 2d 34, where it was held, on facts similar to those in Di Pasquale's case, that the alien made an entry even though he was not aware that he had crossed our borders into Mexico during a trip by train from New York to California.

States from a foreign port or place. Hence, even under petitioner's construction of Section 19 (a) as requiring an intentional departure and return, there was an entry within the meaning of the statute. See *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, 425; *United States ex rel. Stapf* v. *Corsi*, 287 U. S. 129.

Indeed, even if petitioner had not voluntarily gone ashore at Panama City, Panama, his subsequent arrival at Miami, or an arrival at New York, the scheduled destination, would have constituted an entry within the meaning of the statute. Since, as petitioner knew, the S. S. *Andrew Jackson* was scheduled for an intercoastal voyage, he must have realized that it would have to pass through the Panama Canal. And the ship did in fact pass through the Canal. Section 1 of the Act, *supra*, p. 2, expressly defines the term "United States" as excluding the Panama Canal Zone and requires an alien coming from that place or any insular possession to qualify for entry under the same conditions as any other alien. Consequently, on the basis alone of the passage through the Panama Canal, a place which is the equivalent of foreign territory for the purposes of the statute, the instant case falls squarely within the decisions of this Court in *United States ex rel. Claussen* v. *Day*, 279 U. S. 398, and *United States ex rel. Stapf* v. *Corsi*,

supra. Thus, in the *Claussen* case, the facts upon which the decision turned were that the alien was a member of the crew of an American ship which sailed from New York to South America and returned by way of Cuba. There apparently was no evidence that the alien had actually landed in South America or Cuba and the decision was predicated solely on the facts as to the routing of the ship. 279 U. S. at 400–401; see also the opinion of the Second Circuit in the *Claussen* case, 16 F. 2d 15, 16; cf. the *Stapf* case, 287 U. S. at 130. In upholding the order for Claussen's deportation under Section 19 (a), this Court said (279 U. S. at 401):

> * * * a vessel outside the United States whether on the high seas or in foreign waters is not a place included within the United States as defined by the Act. See *Cunard S. S. Co.* v. *Mellon*, 262 U. S. 100, 122. *Scharrenberg* v. *Dollar S. S. Co.*, 245 U. S. 122, 127. The word "entry" by its own force implies a coming from outside. The context shows that in order that there be an entry within the meaning of the Act there must be an arrival from some foreign port or place. There is no such entry where one goes to sea on board an American vessel from a port of the United States and returns to the same or another port of this country with-

> out having been in any foreign port or place. See §§ 19, 32, 33, 35.
>
> And it is clear that petitioner departed from the United States on the *Elisha Atkins* and that, when he landed at Boston on his return from South American and Cuban ports, he made an entry into the United States within the meaning of the Act.

See also *Stapf* v. *Corsi*, 287 U. S. at 133.*

It is clear, therefore, that without recourse to petitioner's landing in Cuba, the evidence showing that he landed at Panama City and that his ship passed through the Panama Canal supports the conclusion of the Immigration and Naturalization Service that he made an entry into the United States at Miami in 1942, and, hence, that he was deportable by reason of his subsequent conviction.

---

* While it is clear, as shown in the text, that an alien passing through the Panama Canal on an intercoastal voyage makes an entry when he arrives at the American terminus, it should not be assumed that such passage through the Canal bars his reentry into the United States. Both the immigration laws and regulations secure to aliens who have acquired a domicile here the right of reentry. See, e. g., 8 U. S. C. 136 (p); Immigration Regulations, 8 C. F. R., 1943 Cum. Supp., 132.1. Moreover, by regulation, the Immigration and Naturalization Service has waived the entry permit requirements for an alien on an intercoastal or coastwise voyage. See 8 C. F. R., 1943 Cum. Supp., 175.44 (d) and (e).

CONCLUSION

For the reasons stated, we respectfully submit that the petition for a writ of certiorari should be denied.

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No. 63

In the Supreme Court of the United States

OCTOBER TERM, 1947

JOSE AUDON SALAZAR DELGADILLO, PETITIONER

v.

ALBERT DEL GUERCIO, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE, DISTRICT NO. 16

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT

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In the Supreme Court of the United States

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No. 63

JOSE AUDON SALAZAR DELGADILLO, PETITIONER

v.

ALBERT DEL GUERCIO, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE, DISTRICT No. 16

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 76–82) is reported at 159 F. 2d 130.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 22, 1947 (R. 83). The petition for a writ of certiorari was filed April 14, 1947, and granted June 2, 1947 (R. 85). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Petitioner, a resident alien, shipped on an American merchant vessel bound from Los Angeles, California, to New York City via the Panama Canal. It appears that he took shore leave at Panama City, Panama. After passing through the Panama Canal, the ship was torpedoed. Petitioner was rescued and landed in Cuba, and was thereafter brought back to the United States through Miami, Florida. The question presented is whether petitioner's arrival at Miami constituted an "entry" into the United States within the meaning of Section 19 (a) of the Immigration Act of 1917, as amended.

STATUTE INVOLVED

The Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, as amended by the Act of June 28, 1940, Sec. 20, 54 Stat. 671, provides in pertinent part:

> Sec. 1 [8 U. S. C. 173]. That the word "alien" wherever used in this Act shall include any person not a native-born or naturalized citizen of the United States; but this definition shall not be held to include Indians of the United States not taxed or citizens of the islands under the jurisdiction of the United States. That the term "United States" as used in the title as well as in the various sections of this Act shall be construed to mean the United States, and any waters, territory, or other place subject to the jurisdiction thereof, ex-

cept the Isthmian Canal Zone; but if any alien shall leave the Canal Zone or any insular possession of the United States and attempt to enter any other place under the jurisdiction of the United States, nothing contained in this Act shall be construed as permitting him to enter under any other conditions than those applicable to all aliens.

* * * * * *

Sec. 19 (a) [8 U. S. C. 155 (a)]. * * * any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States * * * shall, upon the warrant of the Attorney General, be taken into custody and deported. * * *

STATEMENT

Petitioner is a Mexican citizen who legally entered the United States in 1922 or 1923 as an infant in the company of his parents, and resided here continuously until 1942 (R. 14, 15, 23, 27, 34, 36, 38, 52). On or about June 13, 1942, he departed from Los Angeles, California, as a member of the crew of the S.S. *Andrew Jackson*, an American Merchant ship, for an intercoastal voyage to New York City (R. 8a, 9). The ship's articles, which petitioner signed, called for an intercoastal voyage (between the Pacific and Atlantic or Gulf coasts of the United States) (R. 6,

8a), but he was not informed of the precise destination of the ship (R. 36, 37). En route, the ship anchored outside the Panama Canal on the Pacific side (R. 37), and petitioner took shore leave in Panama City, Republic of Panama.[1] After the ship passed through the Canal and while it was continuing its voyage to New York, it was torpedoed, and petitioner, with other survivors, was rescued and taken to Havana, Cuba (R. 15, 24, 26). About one week later, on July 19, 1942, he was returned to the United States through Miami, Florida (R. 15, 26, 37, 50). He was admitted there, in transit, for a period less than 30 days to reship foreign from San Pedro, California (R. 15, 17, 35).[2] Thereafter, petitioner made two voyages as a seaman to Hawaii and return (R. 26). On March 27, 1944, petitioner was convicted of second-degree robbery in California and sentenced, on his plea of guilty, to imprisonment for a term of one year to life (R. 16, 28, 45–48).

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[1] The following testimony was given by petitioner at the deportation hearing (R. 37):

> Q. When your ship left San Pedro destined to its unknown destination, did you pass through the Panama Canal?
>
> A. We were anchored outside the canal before we entered.
>
> Q. Did your boat stop at Panama City dock long or didn't you dock there?
>
> A. Well we were anchored outside. We got shore leave at Panama City.

[2] Petitioner's admission was facilitated by a *nunc pro tunc* waiver of the passport and visa requirements (R. 27, 50).

While petitioner was confined in the California state prison, a warrant of arrest (R. 41–42) was issued and served upon him by the Immigration and Naturalization Service thereby commencing proceedings for his deportation under Section 19 (a) of the Immigration Act of February 5, 1917 (*supra*, p. 3), on the ground that he had been sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, i. e., second degree robbery, committed within five years after entry. The warrant recited that petitioner's entry occurred on July 19, 1942. At the conclusion of the deportation hearings (R. 19–40), the presiding inspector submitted his report, including a discussion of the evidence, proposed findings of fact and conclusions of law, and recommending deportation to Mexico (R. 14–18).[3] The Board of Immigration Appeals thereafter ordered petitioner's deportation[4] (R. 53), and a deportation warrant issued (R. 13–14). Petitioner by

[3] In the "Discussion of the Evidence" (R. 14-15), the presiding inspector discussed only the Cuban landing and did not mention petitioner's testimony referring to his landing at Panama City (R. 15). The "Proposed Findings of Fact" do not refer to any foreign landings, but include a finding (R. 17) "(2) that the respondent last entered the United States July 19, 1942 at the port of Miami, Florida."

[4] The order provided that execution of the warrant should be deferred until petitioner was released from imprisonment. Petitioner was released by the California prison authorities on June 19, 1945, at which time respondent took custody of him under the deportation warrant.

counsel[5] then moved the Board of Immigration Appeals to reopen and reconsider the proceedings on the ground that the landing at Cuba was purely fortuitous (Motion contained with original exhibits on file with Clerk of this Court, pp. 113–116). On July 6, 1945, the Board denied the motion, stating: "Within the meaning of the immigration laws an 'entry' is an arrival from any foreign port or place. The fact that the respondent did not willingly go to Cuba is not material." (R. 54).

On August 27, 1945, petitioner filed a petition for a writ of habeas corpus in the United States District Court for the Southern District of California, challenging the validity of the deportation order (R. 2–8). In response to an order to show cause (R. 10), respondent filed a return (R. 11–12), to which he attached, *inter alia*, the order and warrant for petitioner's deportation and a copy of the transcript of the hearings before the presiding inspector. The writ issued (R. 57), respondent filed a return to the writ (R. 58–59), a hearing was held, and thereafter the district court entered an order granting the petition and discharging petitioner from custody (R. 59).

On appeal to the Circuit Court of Appeals for the Ninth Circuit, the order of the district court

[5] Petitioner had waived representation by counsel at the deportation hearings (R. 20–22, 33–34); the original consideration of his case by the Board of Immigration Appeals was an automatic review (see 8 C. F. R. Cum. Supp. 150.7–150.9).

was reversed (R. 83). The Ninth Circuit held, on the authority of this Court's decisions in *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, and *United States ex rel. Claussen* v. *Day*, 279 U. S. 398, and its own earlier decisions in *Taguchi* v. *Carr*, 62 F. 2d 307, and *Blumen* v. *Haff*, 78 F. 2d 833, certiorari denied, 296 U. S. 644, that whether or not petitioner intended to land on foreign soil or intended to return to the United States, his return to this country after landing in Cuba constituted an "entry" for purposes of the application of Section 19 (a) of the Immigration Act of 1917 (R. 78–79). So far as appears from the opinion below, the evidence adduced at the deportation hearing with respect to petitioner's landing at Panama City was not considered or relied upon.

SUMMARY OF ARGUMENT

It has been repeatedly held by this Court and by the lower federal courts, with obvious Congressional approval, that any physical entry of an alien from a foreign country into the United States, whether such coming be the first or any subsequent one, constitutes an "entry" within the meaning of the immigration laws. Specifically, it has long been established that the period of limitation within which undesirable aliens may be deported pursuant to Section 19 (a) of the Immigration Act of 1917, as amended, and similar statutory provisions, runs from the last such

entry into the United States, regardless of the length of the alien's prior residence in this country or the duration of his visit to a foreign country.

Under a literal application of these principles, it can be concluded that petitioner's involuntary landing in Cuba constituted his subsequent return to this country an "entry." However, it may be questioned whether Congress ever contemplated that an involuntary visit to a foreign country would give rise to a new entry. Also, the previous decisions of this Court relate only to voluntary departures from the United States. In any event, the petitioner should not be discharged since the record indicates that he voluntarily landed at Panama City, Republic of Panama, a circumstance which clearly constitutes his return to this country an "entry", making him deportable under Section 19 (a) of the Immigration Act of 1917, as amended. It will therefore be appropriate for this Court to affirm the decision of the lower court on the basis of petitioner's voluntary landing at Panama City or, if it is of the opinion that the circumstances of such landing should be further explored, to direct that the case be remanded to the immigration authorities for that purpose.

ARGUMENT

IT HAS LONG BEEN HELD THAT EVERY COMING OF AN ALIEN INTO THE UNITED STATES FROM A FOREIGN COUNTRY IS AN "ENTRY" WITHIN THE MEANING OF SECTION 19(A) OF THE IMMIGRATION ACT OF 1917 AND OTHER PROVISIONS OF THE IMMIGRATION STATUTES

The construction of the word "entry" as used in Section 19 (a) of the Immigration Act of 1917, as amended, and other immigration statutes, stems from *Lapina* v. *Williams*, 232 U. S. 78. There this Court held that under Section 3 of the Immigration Act of 1907, c. 1134, 34 Stat. 898, providing for the deportation of any alien woman found engaging in prostitution within three years after entering the United States, the three-year period ran from the alien's return to this country from a temporary visit to a foreign country. This Court specifically rejected the contention that the statute applied only to immigrant aliens, i. e., within three years from the date of the alien's original entry, and hence was inapplicable to resident aliens such as Lapina.* This contention was

* In this case, which involved the Immigration Act of 1907, the Court found the legislative intent to apply the statute to those previously domiciled or resident in this country, and not merely to new immigrants, in (1) the assiduous elimination of all references to "immigrants" and the use of the word "alien" in contradiction to the use of the term "alien immigrants" employed in statutes prior to the 1903 and 1907 Acts, and (2) the explicit exclusion provisions denying admission to various classes of undesirable "aliens,"

squarely rejected by the Court in *Lewis* v. *Frick*, 233 U. S. 291, 297, where the alien had left this country and returned on the same day.

This construction of the deportation provisions of the immigration laws as applying to any entry by an alien into the United States, rather than merely to the original entry of immigrant aliens, was expressly approved and adopted in Section 1 of the Immigration Act of 1917, *supra*, p. 2, which provides that "the word 'alien' whenever used in this Act shall include any person not a native-born or naturalized citizen of the United States." As explained in the report of the Senate Committee on Immigration, S. Rep. 352, 64th Cong., 1st sess. (1916), p. 3: "It places explicitly in the statute the definition of the word 'alien,' which was given it inferentially in the immigration acts of 1903 and 1907, as held by the Supreme Court in *Lapina* v. *Williams* (232 U. S., 78)."[1]

In *United States ex rel. Claussen* v. *Day*, 279 U. S. 398, this Court was confronted with the same general question as is involved in the instant case, whether, under Section 19 (a) of the Immigration Act of 1917, a crime involving moral turpitude for which the alien was sentenced to im-

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which contained their own specific provisos and limitations tending to negative any other and implied exception. See 232 U. S. at 89–93.

[1] In addition to such "affirmative recognition" of this Court's construction of the statute (cf. *Girouard* v. *United States*, 328 U. S. 61, 70), Congress has repeatedly amended the immigration statutes without indicating any device to modify the judicial application of the "entry" concept.

prisonment for more than one year, had been "committed within five years after the entry of the alien to the United States." There an alien seaman who had first entered this country in 1912, later shipped on an American ship for a voyage to South America and return by way of Cuba. He returned from the voyage in 1918, and the crime was committed in 1921. In holding that the alien had departed from the United States and that upon his return in 1918 from South American or Cuban ports he made an entry into the United States within the meaning of the Act, this Court said (p. 401):

> The word "entry" by its own force implies a coming from outside. The context shows that in order that there be an entry within the meaning of the Act there must be an arrival from some foreign port or place. There is no such entry where one goes to sea on board an American vessel from a port of the United States and returns to the same or another port of this country without having been in any foreign port or place.

The rule of this case together with the quoted principles have since controlled the judicial and administrative application of the concept of "entry."

In *United States ex rel. Stapf* v. *Corsi*, 287 U. S. 129, it was held that the return to this country of an alien seaman who had shipped on an American vessel which stayed in Germany for

two and a half days constituted an entry. In this case the alien was deported as an alien who had overstayed the permitted period pursuant to Section 14 of the Immigration Act of 1924 (c. 190, 43 Stat. 153, 162). Except for the new illegal entry based upon his return from Germany, the period of limitation contained in the earlier Immigration Act of 1917 would have barred deportation on the ground of his original illegal entry. Finally, in *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, it was held that an alien's return to the United States from a brief visit to Cuba, after conviction of a crime involving moral turpitude, constituted an "entry," for the purposes of the provision of Section 19 (a) for deportation for such a crime committed prior to entry. And there the Court stated (p. 425) "That the second coming of an alien from a foreign country into the United States is an entry within the usual acceptance of that word is clear enough from *Lewis* v. *Frick*, 233 U. S. 291; *Claussen* v. *Day*, 279 U. S. 398." Thus, the decisions of this Court stand for the propositions that every return of an alien from a foreign country to the United States constitutes an "entry" for the purposes of the immigration laws,[8] regardless of the legality

[8] *Kaplan* v. *Tod*, 267 U. S. 228, relied upon in the petition (pp. 6, 11), not only was decided prior to the *Claussen*, *Stapf*, and *Volpe* cases, but is entirely inapposite. In that case, a feeble minded alien immigrant was held at Ellis Island and ordered excluded, but the outbreak of World War I prevented execution of the order. The alien was then released

or duration of the alien's previous residence in this country, and that the duration of the alien's stay abroad is immaterial.[9] In all of the cases decided by this Court, the alien involved obviously intended and expected to enter a foreign port or place. In no case has the Court considered whether an "entry" may be predicated upon an involuntary touching on foreign soil.

A. IT IS NOT CLEAR WHETHER AN "ENTRY" FOR THE PURPOSES OF SECTION 19 (A) OF THE IMMIGRATION ACT OF 1917, AS AMENDED, MAY BE SAID TO OCCUR WHEN AN ALIEN RETURNS TO THE UNITED STATES AFTER AN INVOLUNTARY VISIT TO A FOREIGN COUNTRY.

In the present case, it is clear that petitioner went to Cuba only as an incident to his rescue after his ship had been torpedoed. The circumstances leading to his landing in Cuba were entirely beyond his control. Both the Board of Immigration Appeals in denying a motion to reopen the deportation proceedings (R. 54) and the

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in the custody of an immigrant aid society until such time as she could be deported safely. More than five years after the original attempted entry, deportation was sought under the first clause of Section 19, and the alien defended on the ground that five years had elapsed since her entry. In upholding the deportation order, this Court held that her release from Ellis Island under these circumstances did not constitute an "entry" and that she must be regarded as having never left the jurisdiction of the immigration authorities at the boundary line.

[9] *Lewis* v. *Frick*, *supra*, (a one-day trip to Canada); *Stapf* v. *Corsi*, *supra*, (a two-and-a-half-day stay in Germany); *Volpe* v. *Smith*, *supra*, (a brief visit to Cuba).

Circuit Court of Appeals (R. 79) held that it was immaterial whether petitioner had intended to land on foreign soil, and that his return to this country from Cuba constituted a new entry. The Circuit Court of Appeals based its decision upon the decisions of this Court in *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, *United States ex rel. Claussen* v. *Day*, 279 U. S. 398, and *United States ex rel. Stapf* v. *Corsi*, 287 U. S. 129, and upon its own earlier decision in *Taguchi* v. *Carr*, 62 F. 2d 307, which it had declared was compelled by the *Stapf* case.[10]

However, in the *Volpe*, *Stapf* and *Claussen* cases, this Court was dealing with the question of whether a return to the United States from a voluntary and deliberate departure constituted an entry. In holding that it did, these decisions did not involve the involuntary departure of an alien from this country, and we know of no other decisions by this Court which have involved this circumstance. Presumably, therefore, the broad

[10] The court below also referred to its earlier decision in *Blumen* v. *Haff*, 78 F. 2d 833 (C. C. A. 9), certiorari denied, 296 U. S. 644. In that case, the alien involved originally entered the United States in 1923, committed grand larceny in 1924–1925, went to England in 1925, and was extradited to this country in 1926 and convicted on a plea of guilty. The court below held that the alien's return to this country under extradition was an entry for the purposes of the clause of Section 19 (a) which provides for deportation of any alien who was convicted, or who admits the commission, prior to entry, of a crime involving moral turpitude. This case is readily distinguished from the present case in that the alien voluntarily went to a foreign country.

language in the decisions of this Court, particularly in the *Claussen* and *Volpe* cases, to the effect that each return of an alien from a temporary trip abroad must be deemed a new entry for the purposes of the immigration laws, must be considered as applying to the facts then presented, i. e., reentries from voluntary departures abroad. This Court has not had occasion to consider whether a return to the United States after an involuntary visit to a foreign port or place, constitutes an entry.

Prior to the instant case, the problem of involuntary departure was presented only in *Taguchi* v. *Carr*, 62 F. 2d 307 (C. C. A. 9), decided and cited by the court below in the instant case, in which the alien signed on an American fishing boat to engage in fishing on the high seas and in Mexican waters. In the course of the voyage the vessel was sunk in a collision and the alien, at his captain's order and to save his life, landed on a Mexican island, where he remained for several days. The court below held the alien's landing on Mexican soil, although unintended, made his return to this country a new entry. After alluding to the facts that as a fisherman the alien must have known the perils of the sea and that in making the voyage into foreign waters he knew that he might not be able to return to the United States, the court said (p. 308):

> Under the immigration laws and the interpretation placed thereon by the Supreme

> Court, we are compelled to hold that, notwithstanding the misfortune which befell appellant, he was coming from a foreign country and therefore was subject to the immigration laws the same as though he had never resided in the United States [citing *United States ex. rel. Stapf* v. *Corsi, supra,* decided a few weeks before.]

Thus, it is clear that the Circuit Court of Appeals thought that its decision in the *Taguchi* case was compelled by *Stapf* and other decisions of this Court.[11]

The circuit courts of appeals have also had occasion to consider what constitutes an "entry" in relation to apparently unwitting departures of an alien from this country. The cases of unwitting (as opposed to involuntary) departure are *Zurbrick* v. *Borg,* 47 F. 2d 690 (C. C. A. 6), *Ward* v. *De Barros,* 75 F. 2d 34 (C. C. A. 1), and *Di Pasquale* v. *Karnuth,* 158 F. 2d 878 (C. C. A. 2), all involving passage by aliens through contiguous foreign countries while traveling as train passengers from one point in the United States to another. In the *Borg* case, the alien traveled from New York City to Detroit via the Michigan Central Railroad's Canadian route, and in the *Di Pasquale* case, the alien traveled by sleep-

[11] See also *Valenti* v. *Karnuth,* 1 F. Supp. 370 (N. D. N. Y.) in which it was held that the alien's visit to Canada in the course of a school picnic did not give rise to a new entry, on the ground that he had been subject to the control of the teacher and was therefore acting under compulsion.

ing car from Buffalo to Detroit via the same route. The alien in the *De Barros* case traveled by train from New York to California by a route partly in Mexico (presumably the Southern Pacific Railroad). In none of the three cases does it appear that the alien knew that the route would take him across the border, although in all three cases he could have ascertained that fact by inquiry. In the *Borg* and *De Barros* cases, the Circuit Courts of Appeals for the Sixth and First Circuits, respectively, held that such departure and return constituted an entry for the purposes of deportation on the ground that the alien did not have an unexpired immigration visa. In the *Di Pasquale* case, the Circuit Court of Appeals for the Second Circuit held that, for the purposes of the clause of Section 19 (a) involved in the instant case, there was no new entry.

In the *De Barros* case, in ruling that he made an entry, the First Circuit held that the controlling factor was not what the alien intended to do but what he, in fact, did; that he went on foreign soil. The court said that the case "did not differ from the situation of one setting out on foot to take a trip in this country, who, not knowing where the jurisdictional line separating us from contiguous foreign territory was, in making the trip went over the line." 75 F. 2d at 35. The decision in the *Borg* case is apparently based upon similar reasoning. On the other hand, in the *Di Pasquale* case the Second Circuit held that the necessary

intent on the part of the alien demanded knowledge by the alien that the route which he is to take will carry him across our borders; that Di Pasquale did not have that intent; and that the intent of a carrier, unknown to the alien, to carry him across a border and back again, upon a route whose termini are within the United States, should not be imputed to him. The court said (p. 879):

> Were it otherwise, the alien would be subjected without means of protecting himself to the forfeiture of privileges which may be, and often are, of the most grave importance to him. He would be charged with the duty, every time he set foot upon a public conveyance to inform himself of its projected journey. Even if aliens were adequately advised of the danger, this would be a serious, and quite useless, burden to impose upon them; but there is nothing to advise them, and the duty would in practice become a trap, whose closing upon them would have no rational relation to anything they could foresee as significant. We cannot believe that Congress meant to subject those who had acquired a residence, to the sport of chance, when the interests at stake may be so momentous.

In both the *De Barros* and *Di Pasquale* cases, it was pointed out that there was no claim that the alien was taken by force out of the country or induced to do so by fraud or deceit.

We have found no specific legislative history which assists in the application of the concept of

"entry" under circumstances such as these. However, as pointed out earlier in this brief, the word "entry" has long been construed by this Court, with Congressional approval, to include any coming of an alien to this country irrespective of previous residence here and without regard to the length of his stay abroad. Also, it is worth emphasizing that in these cases we are not dealing with situations which present strong equities against a literal application of the word "entry." The alien is being deported not because he made a new entry but because he has committed a serious crime indicating that he is an undesirable resident.[12] Rather, the question is what application of the "entry" concept will carry out the statutory purpose. We have seen that Congress clearly intended the five-year period prescribed by Section 19 (a) to run from the alien's last entry into the United States, regardless of the length or legality of his previous residence here or of the duration of his stay abroad. In other words, for the purpose of facilitating the deportation of undesirable aliens it has long been the rule that the five-year period commences to run anew every time the alien enters this country

[12] However, in cases such as *Stapf* v. *Corsi*, *supra*, *Zurbrick* v. *Borg*, *supra*, and *Ward* v. *De Barros*, *supra*, the only offense involved was illegal entry. In each of these cases, a statute of limitations barred deportation for the alien's original illegal entry, but the alien's subsequent return to this country from a brief visit to a foreign country was held to constitute a new illegal entry for which he could be deported.

The rule reflects a deliberate philosophy of using the concept of "entry" which will prolong or renew the statutory period during which undesirable aliens may be deported. As this Court put it in *United States ex rel. Volpe* v. *Smith, supra* (p. 426): "It may be true that if Volpe had remained within the United States, he could not have been expelled because of his conviction of crime in 1925, more than five years after his original entry; but it does not follow that after he voluntarily departed he had the right of reentry. In sufficiently plain language Congress has declared to the contrary." The decision of the lower court in this case involves a literal application of this practical policy embodied in the established concept of "entry."

Upon reconsideration, however, we are inclined to suggest that the Congress may not have intended that an "entry" for the purposes of the immigration laws should be predicated upon a genuinely involuntary departure from the United States, i. e., an involuntary going to a foreign port or place. As pointed out above, nothing in the decisions of this Court requires such a result because in none of those cases was the involuntary-departure situation before the Court. More broadly, it may be said that the law rarely attaches consequences of importance to completely involuntary acts.

In the present case, petitioner as a seaman could have anticipated certain possible events which, if

they occurred, would clearly constitute his return to the United States a new entry. For example, if his ship while en route had been ordered to pick up cargo at a Mexican Pacific port, it could scarcely be contended that this was not an ordinary and probable incident of a seaman's life.[13] But his landing on Cuban soil was of a totally different nature, in that it resulted solely from unpredictable and uncontrollable forces. Thus, his Cuban landing involved not only the uncontrollable event of the torpedoing of his ship but the further accidental event that upon rescue he was taken to a foreign port rather than to an American port. Despite the known risks of enemy action, it seems unrealistic to say that the petitioner should have anticipated that his ship would be torpedoed and that in the event of his rescue he might be taken to a foreign port. It is not too much to say that his departure was in the category of forced departures which was suggested in the *De Barros* and *Di Pasquale* cases as not resulting in a new entry.

There appears to be no basis for distinguishing the present case from *Taguchi* v. *Carr, supra.* In that case, the alien landed on foreign soil following a collision at sea in which his ship was sunk. As in the instant case, the alien's departure, i. e., his going into a foreign port or place, from which he returned to this country, was the result of

[13] Shipping articles do not require specification of intermediate ports of call. 46 U. S. C. 564.

natural forces beyond his control." Thus, we have difficulty in understanding the apparent view of the Second Circuit Court of Appeals, as expressed in the *Di Pasquale* case, that the *Taguchi* case was correctly decided, in distinguishing it from the case then before that court. The Circuit Court stated that "*Taguchi* v. *Carr* is not in point: true, Taguchi was forced outside the United States, and it was a hard constraint that put him to the choice; but he did choose to re-enter and knew he was entering when he did." (p. 879). This was apparently said to distinguish Taguchi's situation from that of Di Pasquale who was asleep when he reentered the United States. But this asserted distinction entirely misses the fact that Taguchi was held to have made a new entry on the ground that he had departed from the United States, i. e., gone to a foreign place, and not because he intentionally and knowingly returned to this country.

If an "entry," for the purpose of Section 19 (a), is regarded as occurring every time that a resident alien returns to this country after touching foreign soil or visiting a foreign port or place no matter under what circumstances, then the court below was unquestionably correct in holding that the petitioner made an entry upon his

[14] It is clear that if Taguchi's ship had merely fished in Mexican territorial waters without touching at any Mexican port, his return from such a voyage would not constitute an entry. *United States ex rel. Claussen v. Day*, *supra*, at p. 401. The Immigration Service has so instructed its officers.

return from Cuba. On the other hand, if an "entry" must contain some element of volition, so that the alien's departure and return, while perhaps not a calculated act, is at least an event subject to his control, then it would seem erroneous to hold that petitioner's touching Cuban soil constituted his return to this country a new entry for the purposes of Section 19 (a). For the assistance of the Court, we should state that in an analogous situation the Immigration and Naturalization Service has not predicated an entry upon the return from an involuntary touching of foreign soil. Thus, the Service has ruled that an entry is not considered to have been made if an alien serving in the armed forces departs from and returns to the United States pursuant to orders of his superior officers. It seems to us that this ruling is clearly sound in recognizing that such departure and return of an alien serviceman is a matter completely beyond his control. In principle, we are unable to distinguish an involuntary landing in a foreign country resulting from a torpedoing or shipwreck from the situation of the alien in the armed forces.

If this Court should conclude that the circumstances under which petitioner returned to the United States after visiting Cuba do not constitute an entry, we think it can place its decision on the ground that there is no reason to believe that Congress intended an entry to be based upon the return from an involuntary touching on foreign soil.

B. THE PETITIONER'S APPARENT VOLUNTARY LANDING AT PANAMA CITY CONSTITUTES HIS RETURN TO THIS COUNTRY A NEW ENTRY UNDER WELL ESTABLISHED PRINCIPLES

Even if this Court should conclude that petitioner's involuntary visit to Cuba did not constitute his return to this country a new entry, the record strongly suggests another basis for concluding that his return to this country from the voyage in question was an entry.[15] At the deportation

[15] We should like to state, contrary to the suggestion in our brief in opposition to the granting of the petition for a writ of certiorari (at pp. 9–11), that the mere transit through the Panama Canal would not appear to be sufficient for this purpose. While a literal reading of the definition of the term "United States" in Section 1 of the 1917 Act (*supra*, p. 2) which excludes the Panama Canal Zone, would appear to support the conclusion that mere passage through the Canal *ipso facto* brings the alien into a foreign port or place (cf. *Claussen* v. *Day*, *supra*, p. 401), reference to the legislative history of this definition indicates no such effect was intended. As shown by congressional committee reports discussing the inclusion of the references to the Panama Canal in the definition of United States, the purpose was merely to make it clear that the 1917 Act did not apply to admissions to the Canal Zone and to assure that aliens native of the zone or who had entered there from foreign countries could not "claim that they had already 'entered the United States' and were therefore exempt from the immigration laws." H. Rep. 4912, 59th Cong., 1st sess. (1906), p. 21, reporting on S. 4403 which became the 1917 Act. The Immigration and Naturalization Service considers a ship making a round-trip voyage from one part of the United States to another part of the United States as having arrived from a foreign port or place by reason of passage through the Canal only if it takes on or discharges pas-

hearing, petitioner stated: "We got shore leave at Panama City." (R. 37.)[16] The clear meaning of petitioner's statement is that he, along with other members of the crew of the *Andrew Jackson*, voluntarily went ashore at Panama City, Republic of Panama. It is well established that his return to the United States after voluntarily entering a foreign country constitutes a new entry for the purpose of Section 19 of the Immigration Act of 1917. In the *Claussen* and *Stapf* cases, this Court held that where an alien seaman makes a voyage on an American ship to foreign ports, his return to this country is an entry within the meaning of the immigration statutes. In neither of those cases did it appear whether the alien had actually gone ashore, nor was it indicated that that circumstance was material.[17] In the instant case, it appears that petitioner voluntarily went ashore in a foreign country, a circumstance which seems to be an even more persuasive basis for a new entry than simply the anchoring or docking of a ship in a foreign port as in the *Claussen* and *Stapf* cases.

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sengers, cargo or crew there and not if it merely transits the Canal or fuels there. Cf. 8 C. F. R. Cum. Supp. 120.1–120.3.

[16] The full testimony on this matter is also set forth on p. 4 of this brief.

[17] In *United States ex rel. Roovers* v. *Kessler*, 90 F. 2d 327 (C. C. A. 5), where it affirmatively appeared that the alien had not gone ashore at any foreign port visited by his ship, it was held that his return from the voyage constituted an entry, citing the *Claussen* and *Stapf* cases.

The lower courts, following *Claussen* v. *Day*, have consistently held an entry to have occurred where an alien seaman returns from a voyage to foreign ports.[18] Futhermore, the same concept of "entry" has been consistently applied by the lower federal courts to the departure and return to the United States of aliens other than seamen, no matter how brief the visit. See, e. g., *Del Guercio* v. *Gabot*, 161 F. 2d 559, 561 (C. C. A. 9) (four-hour visit to Mexico); *Guarneri* v. *Kessler*, 98 F. 2d 580 (C. C. A.), certiorari denied, 305 U. S. 648 (two or three-day visit to Cuba); *Jackson* v. *Zurbrick*, 59 F. 2d 937 (C. C. A. 6) (few hours' visit to Canada); *Cahan* v. *Carr*, 47 F. 2d 604, 605 (C. C. A. 9), certiorari denied, 283 U. S. 862 (one-day visit to Tiajuana or Agua Caliente); *United States ex rel. Natali* v. *Day*, 45 F. 2d 112, 113 (C. C. A. 2) (two-day visit to Canada); *United States ex rel. Medich* v. *Burmaster*, 24 F. 2d 57, 58 (C. C. A. 8) (alien taxi driver taking passenger to Canada and returning same day); *United States ex. rel. Drachmos* v. *Hughes*, 26 F. Supp. 193 (D. N. J.), affirmed 110 F. 2d 662 (C. C. A. 3) (overnight visit to Canada); *United States ex rel. Siegel* v. *Reimer*, 23 F. Supp. 643 (S. D. N. Y.), affirmed 97 F. 2d 1020 (C. C. A. 2) (two-day visit to Canada); *Ex parte Tatsuo Saiki*, 49 F. 2d 469

[18] *United States ex rel. Lehtola* v. *Magie*, 47 F. 2d 768 (D. Minn.); *Schmucker* v. *Martinez*, 37 F. 2d 315 (C. C. A. 4); *United States ex rel. Bardakos* v. *Mudd*, 33 F. 2d 334 (D. Md.).

(W. D. Wash.) (vessel on which alien a passenger from Seattle to Alaska makes 10 hours stopover at Canadian port, alien remaining aboard); *United States ex rel. Lehtola* v. *Magie*, 47 F. 2d 768 (D. Minn.) (alien seaman on Great Lakes taking shore leave at Canadian port); *United States ex rel. Kowalenski* v. *Flynn*, 17 F. 2d 524 (W. D. N. Y.) (one-day picnic in Canada); *United States ex rel. Patricola* v. *Karnuth*, 9 F. Supp. 961 (W. D. N. Y.) (few hour visit to Canada); *United States ex rel. Ueberall* v. *Williams*, 187 Fed. 470 (S. D. N. Y.) (one-hour visit to Canadian side of Niagara Falls).

It has been pointed out that neither the presiding inspector, the Board of Immigration Appeals, nor the court below, considered or relied upon the circumstance of petitioner's voluntary landing at Panama City. Yet it is clear, giving to petitioner's statement its normal meaning, that in fact he went ashore voluntarily at Panama City, a foreign port. And it is established that such landing constituted petitioner's return to the United States a new entry for the purposes of Section 19 (a) of the Immigration Act of 1917, as amended. Consequently, if on the present record this Court is satisfied that the petitioner landed at Panama City, it can affirm the judgment of the court below, notwithstanding that neither the immigration authorities nor the court below based the finding of an entry upon such

landing.[19] If, however, the Court is of the opinion that the evidence relating to petitioner's landing at Panama City should be further developed, we submit that the cause should be remanded to the immigration authorities to receive such further evidence. The propriety of such a disposition of the case is confirmed by the procedure followed by this Court in *Mahler* v. *Elby*, 264 U. S. 32, 45, and *Tod* v. *Waldman*, 266 U. S. 113, 118, also involving deportation proceedings. This procedure has been followed by the lower federal courts, e. g., *United States ex rel. Zaffarano* v. *Corsi*, 63 F. 2d 757 (C. C. A. 2); *Exedahtelos* v. *Fluckey*, 54 F. 2d 858 (C. C. A. 6).

Respectfully submitted.

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OCTOBER 1947.

[19] It is settled that an appellee or respondent may "urge in support of a decree any matter appearing in the record, although his argument may involve an attack upon the reasoning of the lower court or an insistence upon matter overlooked or ignored by it." *United States* v. *American Railway Express Co.*, 265 U. S. 425, 435; *Langnes* v. *Green*, 282 U. S. 531, 538; *LeTulle* v. *Scofield*, 308 U. S. 415, 421; *Standard Accident Ins. Co.* v. *Roberts*, 132 F. 2d 794 (C. C. A. 8).

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SUPREME COURT OF THE UNITED STATES

No. 63.—October Term, 1947.

Jose Audon Salazar Delgadillo, Petitioner, v. William A. Carmichael, District Director, Immigration and Naturalization Service, United States Department of Justice, District No. 16.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[November 10, 1947.]

Mr. Justice Douglas delivered the opinion of the Court.

Petitioner is detained by respondent under a deportation order, the validity of which is challenged by a petition for a writ of habeas corpus. The District Court granted the petition and discharged petitioner. The Circuit Court of Appeals reversed, 159 F. 2d 130. The case is here on a petition for a writ of certiorari which we granted because of the seeming conflict between the decision below and *Di Pasquale* v. *Karnuth*, 158 F. 2d 878, from the Second Circuit Court of Appeals.

Petitioner is a Mexican citizen who made legal entry into this country in 1923 and resided here continuously until 1942. In June of that year, when this nation was engaged in hostilities with Germany and Japan, he shipped out of Los Angeles on an intercoastal voyage to New York City as a member of the crew of an American merchant ship. The ship was torpedoed after passing through the Panama Canal on its way to New York City. Petitioner was rescued and taken to Havana, Cuba, where he was taken care of by the American Consul for about one week. On July 19, 1942, he was returned to the United States through Miami, Florida, and thereafter continued to

serve as a seaman in the merchant fleet of this nation. In March 1944 he was convicted in California of second-degree robbery and sentenced to imprisonment for a term of one year to life. While he was confined in the California prison, proceedings for deportation were commenced against him under § 19 (a) of the Immigration Act of February 5, 1917, 39 Stat. 874, as amended 54 Stat. 671, 8 U.S.C. § 155 (a).

That section provides in part:

> ". . . any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States . . . shall, upon the warrant of the Attorney General, be taken into custody and deported. . . ."

Those requirements for deportation are satisfied if petitioner's passage from Havana, Cuba, to Miami, Florida, on July 19, 1942, was "the entry of the alien to the United States" within the meaning of the Act.

In *United States ex rel. Claussen* v. *Day*, 279 U.S. 398, *United States ex rel. Stapf* v. *Corsi*, 287 U. S. 129, and *United States ex rel. Volpe* v. *Smith*, 289 U S. 422, there is language which taken from its context suggests that every return of an alien from a foreign country to the United States constitutes an "entry" within the meaning of the Act. Thus in the *Smith* case it was stated, 289 U. S. p. 425, that "any coming of an alien from a foreign country into the United States whether such coming be the first or any subsequent one" is such an "entry." But those were cases where the alien plainly expected or planned to enter a foreign port or place. Here he was catapulted into the ocean, rescued, and taken to Cuba. He had no part in selecting the foreign port as his destination. His itinerary was forced on him by wholly fortuitous circumstances. If, nonetheless, his return to this country was an "entry" into the United States within the meaning of the Act, the

law has been given a capricious application as *Di Pasquale* v. *Karnuth*, *supra*, suggests.

In that case an alien traveled between Buffalo and Detroit on a railroad which, unknown to him, passed through Canada. He was asleep during the time he was in transit through Canada and was quite unaware that he had left or returned to this country. The court refused to hold that the alien had made an "entry," for to do so would impute to Congress a purpose to subject aliens "to the sport of chance." 158 F. 2d 879. In this case petitioner, of course, chose to return to this country, knowing he was in a foreign place. But the exigencies of war, not his voluntary act, put him on foreign soil.[1] It would indeed be harsh to read the statute so as to add the peril of deportation to such perils of the sea. We might as well hold that if he had been kidnapped and taken to Cuba, he made a statutory "entry" on his voluntary return. Respect for law does not thrive on captious interpretations.

Deportation can be the equivalent of banishment or exile. See *Bridges* v. *Wixon*, 326 U. S. 135, 147. The stakes are indeed high and momentous for the alien who has acquired his residence here. We will not attribute to Congress a purpose to make his right to remain here dependent on circumstances so fortuitous and capricious as those upon which the Immigration Service has here seized. The hazards to which we are now asked to subject the alien are too irrational to square with the statutory scheme.

Other grounds are now sought to be advanced for the first time in support of the deportation order. They are not open on the record before us.

Reversed.

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[1] If his intercoastal voyage had continued without interruption, it is clear that he would not have made an "entry" when he landed at its termination. *United States ex rel. Claussen v. Day*, *supra*, p. 401.